United States Department of Labor
Employees' Compensation Appeals Board

B.F., Appellant	)	
and	)	**Docket No. 07-1670**
	)	**Issued: January 15, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 5, 2007 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated August 28, 2006 and February 2, 2007 finding that she had not established a recurrence of disability. 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 has met her burden of proof in establishing that she sustained a recurrence of disability on or after February 4, 2006.

FACTUAL HISTORY

On November 17, 2004 appellant, then a 50-year-old mail processor, filed an occupational disease claim alleging that she developed carpal tunnel syndrome due to working at her machine in the performance of duty. The Office accepted appellant's claim for bilateral carpal tunnel syndrome on April 11, 2005. Appellant underwent a surgical median nerve decompression and neurolysis left wrist on July 26, 2005. The Office entered her on the periodic

rolls on September 14, 2005. Appellant underwent a surgical decompression of the right median nerve and neurolysis on October 4, 2005.

Appellant's attending physician, Dr. A. Lee Osterman, a Board-certified surgeon, completed a form report on November 3, 2005 and indicated that appellant could return to work eight hours a day with restrictions on repetitive movements of the wrist, pushing, pulling, lifting more than 10 pounds and climbing. On November 23, 2005 Dr. Osterman stated that appellant could perform "self-paced nonquota, nonassembly line" work which did not interfere with therapy. On December 8, 2005 the employing establishment offered appellant a light-duty assignment of casing mail in the lower holdouts in cases. Appellant was to work at her own pace with limited pushing, pulling and lifting less than 10 pounds. She stated that she would attempt the duties of the offered light-duty position and see if she could perform casing of mail on December 11, 2005.

Appellant initially returned to light-duty work eight hours a day on December 11, 2005. She stopped work on December 25, 2005 alleging that she was in too much pain to work. Appellant used sick leave through January 13, 2006 and returned to work for one day on January 14, 2006. She sought medical treatment on January 17, 2006. Appellant submitted a note from a physician's assistant removing her from work. She filed claims for compensation requesting wage-loss compensation from January 18 through March 4, 2006.

In a note dated January 25, 2006, Dr. Osterman found that appellant continued to experience numbness and tingling in both hands despite the carpal tunnel releases and recommended a repeat electromyelogram (EMG). He found full range of motion in both wrists and fingers. Dr. Osterman stated that appellant's Phalen's sign was negative and that her Tinel's signs were positive on the left.

In a letter dated March 21, 2006, the Office informed appellant that the record indicated that she might have sustained a recurrence of disability or a new employment injury. The Office directed appellant to file the appropriate claim form. Appellant submitted an EMG and nerve conduction study dated March 27, 2006 conducted by a physical therapist.

By decision dated April 25, 2006, the Office denied appellant's claim, finding that she had not established a recurrence of disability beginning February 4, 2006 causally related to her accepted claim for carpal tunnel syndrome.

Appellant requested a review of the written record on May 18, 2006. In a report dated March 29, 2006, Dr. Osterman reviewed appellant's history of injury and attributed her carpal tunnel syndrome to her employment duties. He described her medical treatment and surgeries. Dr. Osterman noted that appellant's repeat EMG was normal. He noted that she continued to complain of hand numbness. Dr. Osterman made no findings on examination in support of appellant's claim. He stated, "At this point, the cause of [appellant's] ongoing numbness remains unclear. I do not see an obvious proximal lesion and her electrical studies were essentially noted to be normal." Dr. Osterman concluded that appellant could not perform her date-of-injury position, but could work at a sedentary light-duty job defined as "varied clerical." He stated that appellant should "avoid repetitive assembly line wrist motion." Appellant also submitted additional notes from a physician's assistant. In a report dated June 26, 2006,

Dr. Alishia A. Saunders, a Board-certified internist, stated that on January 17, 2006 appellant exhibited marked swelling and decreased range of motion of both hands. She prescribed pain medication and referred appellant to a pain center. Dr. Saunders stated, "Without question, this last occurrence was caused by the repetitive motion caused by handling mail at her place of employment. During January 18 through February 3, 2006, [appellant] was completely disabled."

By decision dated August 28, 2006, the hearing representative found that appellant had not met her burden of proof to establish a recurrence of disability beginning February 4, 2006 and affirmed the April 25, 2006 decision.

Appellant, through her attorney, requested reconsideration on December 11, 2006. She alleged that the Office had "tacitly" acknowledged that she was entitled to temporary total disability as she received these benefits from January 18 through February 2, 2006. Appellant's attorney contended that the burden of proof remained with the Office to establish that appellant was no longer disabled due to her accepted employment injury. Counsel also alleged that the job offer did not comply with her medical restrictions as casing mail was a repetitive function.

Dr. Osterman completed a report on November 22, 2006 and listed appellant's restrictions as lifting 10 to 12 pounds, no repetitive single line wrist or hand activities and no ladders. In a report dated December 13, 2006, he noted appellant's allegations that she was doing an assembly line-type job. Dr. Osterman stated that appellant had significant residual problems relative to her hand in terms of flexor tenosynovitis, elements of residual nerve irritation, diabetes, ulnar wrist impaction and osteoarthritis.

By decision dated February 2, 2007, the Office declined to modify its prior decisions. It asserted that as appellant's light-duty position was self-paced it could not be considered an assembly line-type position. The Office concluded that appellant had not met her burden of proof in establishing a recurrence of disability on or after February 4, 2006.[1]

LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means 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 (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[2]

[1] Neither appellant nor her attorney appealed the Office's December 13, 2006 overpayment decisions. As she has not requested review of this decision, the Board will not address it on appeal.

[2] 20 C.F.R. § 10.5(x).

Appellant, for each period of disability claimed, has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be provided by the preponderance of the reliable probative and substantial medical evidence.[3]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurts too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[4]

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome on April 11, 2005. Appellant underwent surgical carpal tunnel releases on July 26 and October 4, 2005. Her attending physician, Dr. Osterman, released appellant to return to light-duty work on November 23, 2005. Dr. Osterman indicated that her restrictions were "self-paced nonquota, nonassembly line" work with no repetitive motions of the wrist, pushing, pulling or lifting more than 10 pounds and no climbing. The employing establishment provided appellant with a light-duty assignment on December 8, 2005 which included casing mail at her own pace and otherwise complied with the physical restrictions set out by Dr. Osterman.

Appellant returned to work in this position on December 11, 2005 and worked through December 25, 2005. She then used leave from December 25, 2005 through January 13, 2006 and again stopped work on January 14, 2006. Appellant filed a claim for compensation requesting wage-loss compensation beginning January 18, 2006.

In support of her contention that she was not capable of performing the duties of the light-duty position, appellant noted that she first sought treatment for her condition on January 17, 2006. Appellant submitted a report dated June 26, 2006 from Dr. Saunders, a Board-certified internist, asserting that on January 17, 2006 appellant exhibited marked swelling and decreased range of motion of both hands. Dr. Saunders attributed appellant's condition to repetitive motions involved in handling mail. She opined that appellant was totally disabled from January 18 through February 3, 2006. This report is not sufficient to meet appellant's burden of proof in establishing total disability on or after February 4, 2006 as Dr. Saunders did not indicate that she was totally disabled after February 3, 2006 and did not provide any work restrictions on or after that date.

Dr. Osterman, a Board-certified surgeon, examined appellant on January 25, 2006 and noted that she continued to experience numbness and tingling in both hands with a positive Tinel's sign on the left. On March 29, 2006 he found that appellant's electrodiagnostic testing was normal and stated that the cause for her ongoing numbness was "unclear." Dr. Osterman

[3] *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

[4] *Id.*

again advised that she could work with restrictions avoiding repetitive assembly line type wrist movements. Dr. Osterman did not support that appellant was totally disabled on or after February 4, 2006 due to her accepted employment injury. While he noted that she continued to experience numbness in both hands, Dr. Osterman was unable to identify a cause for this condition or attribute her condition to appellant's accepted employment injury. This report is not sufficient to support appellant's claim for total employment-related disability.

In reports dated November 22 and December 13, 2006, Dr. Osterman provided appellant's work restrictions and stated that appellant believed that she was performing assembly line-type jobs. He did not offer his opinion regarding whether appellant's light-duty position complied with her restrictions and did not discuss whether she was totally disabled on or after February 4, 2006. This report is not sufficient to meet appellant's burden of proof in establishing that she was totally disabled after February 4, 2006 due to her accepted employment injury.

Appellant's attorney argued that the burden of proof remained on the Office to establish that she was no longer disabled due to her accepted condition of bilateral carpal tunnel syndrome. He argued that, as the Office had paid compensation for a portion of the period claimed by appellant, it had in fact accepted her claim for total disability. The Board has held that the payment of compensation by the Office does not, in and of itself, constitute acceptance of a particular condition or disability in the absence of evidence from the Office indicating that a particular condition or disability has been accepted as work related.[5] Furthermore, appellant returned to work for almost two weeks before determining that she was no longer able to perform the duties of the light-duty position. There is a presumption that a lengthy return to work constitutes a successful return to work. Appellant has not submitted the necessary evidence to rebut that presumption in this case.[6] Therefore, the burden of proof to establish a period of total disability on or after February 4, 2006 was properly placed on appellant by the Office.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical evidence to establish that she was totally disabled on or after February 4, 2006.

[5] *Gary L. Whitmore*, 43 ECAB 441, 446 (1992).

[6] *But see Elaine Sneed*, 56 ECAB ___ (Docket No. 04-2039, issued March 7, 2005). (Finding that, as appellant not only sought medical advice for additional restrictions following a return to light-duty work of one day, but continued to seek medical treatment which resulted in additional restrictions, the presumption that a return to work of two weeks was successful had been rebutted.)

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 2, 2007 and August 28, 2006 are affirmed.

Issued: January 15, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board