

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

K.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lockbourne, OH, Employer**

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**Docket No. 10-1966
Issued: June 13, 2011**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 27, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 28, 2010, which affirmed a January 5, 2010 decision denying her claim for recurrence of disability. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on April 13, 2009 causally related to the accepted employment injury of August 27, 2008.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On September 23, 2008 appellant, then a 56-year-old rural letter carrier, filed an occupational disease claim for carpal tunnel syndrome that she attributed to performing repetitive duties at work. The Office accepted the claim for bilateral carpal tunnel syndrome and left cubital tunnel syndrome and authorized surgery. Appellant stopped work on September 12, 2008 and returned to a light-duty position with restrictions on January 2, 2009 and was released to full duty on January 6, 2009. She was placed in emergency off-duty status on April 21, 2009 and on May 4, 2009 she was removed from her job for misconduct.

Appellant was initially treated by Dr. Neil C. Ghany, a Board-certified orthopedist, from May 21 to October 13, 2008, for worsening bilateral hand numbness. Dr. Ghany noted a November 12, 2007 electromyogram (EMG) of the right upper extremity revealed severe right carpal tunnel syndrome. He further noted that an August 12, 2008 EMG of the left upper extremity revealed left carpal tunnel syndrome and cubital tunnel syndrome. Dr. Ghany diagnosed bilateral carpal tunnel syndrome and cubital tunnel syndrome of the left elbow and recommended surgical intervention. On September 11, 2008 he performed right carpal tunnel release and diagnosed right carpal tunnel syndrome. On September 25, 2008 Dr. Ghany performed a left carpal tunnel release and left elbow ulnar nerve transposition and diagnosed left carpal tunnel syndrome and left elbow cubital tunnel syndrome. Appellant was also treated by Dr. Carl E. Otton, Board-certified in occupational medicine, from September 13 to November 28, 2008, for bilateral carpal tunnel syndrome and ulnar neuropathy. She reported performing repetitive duties at work approximately 48 hours per week and developing pain and numbness in both wrists. Dr. Otton diagnosed bilateral carpal tunnel syndrome and left cubital tunnel syndrome status post carpal tunnel releases. In reports dated October 17 to November 28, 2008, he opined that appellant's condition was work related and noted that she was totally disabled.

On January 2, 2009 Dr. Otton released appellant to work with restrictions and to full duty on January 6, 2009. On March 17, 2009 he noted that she returned to work full time but experienced weakness and pain in her thumb and fingers. Dr. Otton diagnosed possible inflammation in the flexor tendon of the thumb and noted that appellant could continue to work without restrictions. On April 13, 2009 appellant presented with flexor tendon pain in both thumbs after working 48 hours per week performing repetitive duties. Dr. Otton diagnosed stenosing flexor tenosynovitis of both thumbs and recommended that she continue to work without restrictions. In a discharge and return to work certificate dated April 13, 2009, he diagnosed bilateral carpal tunnel syndrome, status post bilateral carpal tunnel release and left cubital tunnel syndrome release and returned appellant to work without restrictions.

On April 22, 2009 the employing establishment noted that appellant was placed in off-duty status as of April 21, 2009 for improper conduct. On May 5, 2009 the employing establishment removed appellant from employment for improper conduct after determining that she disposed of deliverable mail into a dumpster on April 20, 2009.

Appellant was treated by Dr. Ghany on April 27, 2009 who noted that she returned to work in January 2009 but had worsening pain and numbness in the fingertips. Dr. Ghany noted findings of mild clawing of the ring and small finger and decreased sensation. He diagnosed

severe carpal tunnel and cubital tunnel syndrome with lack of function of the nerves. On May 4, 2009 Dr. Ghany treated appellant for left side numbness and weakness. He noted positive Phalen's test at the elbow, mild clawing of the hand and diminished sensation. Dr. Ghany noted improvement with regard to the carpal tunnel surgery and worsening over the ulnar nerve transposition and recommended a revision ulnar nerve transposition. In a May 4, 2009 work status report, he noted that appellant was off work awaiting approval for surgery.

On May 12, 2009 Dr. Otton treated appellant for recurrent carpal tunnel syndrome. Appellant related to Dr. Otton that Dr. Ghany placed her off work on May 4, 2009. In a return to work certificate, Dr. Otton diagnosed status post bilateral carpal tunnel release, left cubital tunnel release and recurrent carpal tunnel syndrome and noted that she was totally disabled from May 12 to June 2, 2009. On June 2, 2009 he treated appellant for symptoms associated with recurrent carpal tunnel syndrome and left cubital tunnel syndrome. Dr. Otton noted weakness in both hands and triggering in her thumbs. In a June 2, 2009 return to work certificate, he diagnosed recurrent carpal tunnel syndrome and noted that appellant was totally disabled from June 2 to July 14, 2009. On July 14, 2009 Dr. Otton diagnosed status post carpal tunnel release and left cubital tunnel release and recurrent carpal tunnel syndrome and noted that she was totally disabled from July 14 to August 18, 2009.

In a July 28, 2009 report, Dr. Ghany noted that appellant was status post bilateral carpal tunnel release and left cubital tunnel release with worsening ulnar nerve symptoms. He diagnosed worsening of the ulnar neuropathy at the elbow with trigger thumb and noted that he would perform surgery. On July 28, 2009 Dr. Ghany performed a left elbow flexion pronator muscle lengthening with transpositioning of the ulnar nerve and diagnosed left elbow recurrent ulnar nerve compressive neuropathy.²

In reports dated August 18 and September 15, 2009, Dr. Otton noted that appellant was status post July 28, 2009 revision of left ulnar nerve transposition. He diagnosed recurrent bilateral carpal tunnel syndrome and bilateral thumb triggering and noted that she was to remain off work. In a September 15, 2009 return to work certificate, Dr. Otton advised that appellant was totally disabled from September 15 to October 8, 2009.

On September 24, 2009 appellant filed a Form CA-2a, notice of recurrence of disability alleging that on April 13, 2009 she had a recurrence of weakness and pain in her arms and hands causally related to her August 27, 2008 work injury. The employer noted that she stopped work on April 21, 2009. Appellant submitted an October 8, 2009 report from Dr. Otton who diagnosed ulnar neuropathy and recurrent left cubital tunnel syndrome status post 2008 left carpal tunnel release and 2009 revision of left cubital. He recommended occupational therapy and advised that appellant would remain off work. Also submitted were September 9 to November 16, 2009 reports from Dr. Ghany who noted that she was post surgery of left elbow ulnar nerve transposition and was improving.

² The Office authorized the surgery.

By letter dated November 10, 2009, the Office advised appellant of the type of evidence needed to establish her claim for recurrence of disability and requested that she submit such evidence, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted physical therapy notes from April 14 to December 14, 2009. Also submitted was a December 3, 2009 report from Dr. Otton who diagnosed left ulnar neuropathy, recurrent, status post left carpal tunnel release and a 2009 revision of the left cubital. He recommended that appellant remain off work.

In a January 5, 2010 decision, the Office found that the evidence submitted did not establish that appellant sustained a recurrence of disability on April 13, 2009 causally related to her August 27, 2008 work injury.

On January 18, 2010 appellant requested an oral hearing which was held on April 13, 2010. She submitted reports from Dr. Ghany dated April 27 to July 28, 2009, previously of record. Appellant submitted a December 14, 2009 functional capacity evaluation which noted that she could work in the medium work demand level with limitations. Other reports from Dr. Otton dated January 7 to June 10, 2010, diagnosed recurrent left ulnar neuropathy, status post left carpal tunnel release and 2009 revision of left cubital tunnel repair. In return to work certificates dated January 7 to June 10, 2010, he returned appellant to work on January 7, 2010 with restrictions. Appellant submitted an undated note received by the Office on January 22, 2010 indicating that she was resigning from her position because she was no longer able to perform her duties due to her medical condition.

In a June 28, 2010 decision, the Office hearing representative affirmed in part and modified in part the January 5, 2010 decision. The hearing representative noted that the evidence was sufficient to support that appellant's accepted left ulnar condition worsened and that she became totally disabled on July 28, 2009, the date appellant underwent authorized ulnar surgery and sustained a recurrence of disability on that date.

LEGAL PRECEDENT

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 injury or illness without an intervening injury or a new exposure to the work environment.³

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury.⁴ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports

³ 20 C.F.R. § 10.5(x).

⁴ *Alfredo Rodriguez*, 47 ECAB 437 (1996); see *Dominic M. DeScala*, 37 ECAB 369 (1986).

that conclusion with sound medical reasoning.⁵ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.⁶

When a claimant stops working at the employing establishment for reasons unrelated to his employment-related physical condition, he has no disability within the meaning of the Act.⁷

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and left cubital tunnel syndrome and authorized right carpal tunnel release on September 11, 2008, left carpal tunnel release and left ulnar nerve transposition on September 25, 2008 and revision of left ulnar nerve transposition on July 28, 2009. Appellant stopped work on September 12, 2008 and returned to work with restrictions on January 2, 2009 and full duty on January 6, 2009. She was placed in emergency off-duty status on April 21, 2009 and on May 4, 2009 she was removed from employment for misconduct. On September 24, 2009 appellant filed a claim for a recurrence of disability occurring on April 13, 2009. She stopped work on April 21, 2009 when she was placed in emergency off-duty status. The Board finds that the medical record lacks a well-reasoned narrative from appellant's physicians relating appellant's claimed recurrence of disability to her accepted employment injury.

Appellant submitted reports from Dr. Otton, who released her to work full duty on January 6, 2009. On March 17 and April 13, 2009 Dr. Otton noted that she could continue to work without restrictions. None of the medical records submitted most contemporaneous with the onset of the alleged recurrence of disability specifically mention that appellant had a recurrence of disability or that any work stoppage beginning April 21, 2009 was causally related to the August 27, 2008 employment injury and that she could not work. Rather, Dr. Otton indicated that appellant could continue working full duty.

On May 12, 2009 Dr. Otton treated appellant for recurrent carpal tunnel syndrome and related that Dr. Ghany recommended that she stop work. In reports dated June 2 and July 14, 2009, he treated appellant for recurrent carpal tunnel syndrome and left cubital tunnel syndrome and continued total disability. Likewise, in return to work certificates dated May 12 to July 14, 2009, Dr. Otton diagnosed recurrent carpal tunnel syndrome and noted that appellant was totally disabled from May 12, to August 18, 2009. However, the Board notes that these medical reports fail to specifically support that she had a recurrence of total disability causally related to the accepted work injury or otherwise provide medical reasoning explaining why any current condition or disability was disabling and due to the August 27, 2008 employment injury. The

⁵ See *Nicolea Bruso*, 33 ECAB 1138 (1982).

⁶ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁷ See *John W. Normand*, 39 ECAB 1378 (1988) (where the claimant was removed from his light-duty position for disciplinary reasons, the Board found no disability within the meaning of the Act). Office regulations indicate that there is no recurrence of disability when withdrawal of light duty occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force. 20 C.F.R. § 10.5(x). Regarding the Act, see 5 U.S.C. §§ 8101-8193.

Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁸ Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant was treated by Dr. Ghany on April 27, 2009 who diagnosed severe carpal tunnel and cubital tunnel syndrome but did not specifically address whether her disability beginning April 21, 2009 was due to her accepted conditions. On May 4, 2009 Dr. Ghany noted worsening of her condition over the ulnar nerve transposition which was caused by scarring of the nerves or damage to the blood supply when moving the nerve on September 25, 2008. He recommended a revision ulnar nerve transposition and noted that appellant was off work awaiting approval for surgery. However, none of the medical records submitted specifically mention that she had a recurrence on April 13, 2009 or that disability beginning April 21, 2009 causally related to the August 27, 2008 employment injury or otherwise provide medical reasoning explaining why any current condition or disability was due to the August 27, 2008 employment injury.⁹ Therefore, this report is insufficient to meet appellant's burden of proof.

The Board further notes that appellant was placed on emergency off-duty status on April 21, 2009 and was removed from her position on May 4, 2009. Appellant was working in a full-time regular-duty position when she was removed from the employing establishment due to misconduct. There is no evidence indicating that the removal from regular duty was related to her employment injury. As noted above, when a claimant stops working at the employing establishment for reasons unrelated to her employment-related physical condition, she has no disability within the meaning of the Act.¹⁰

Appellant did not otherwise submit medical evidence supporting that she sustained a recurrence of disability from April 21 to July 27, 2009, that was causally related to her August 27, 2008 work injury. As noted, the Office hearing representative accepted her disability beginning July 28, 2009 due to her accepted surgery of that date.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability from April 21 to July 27, 2009 causally related to her accepted condition.

⁸ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁹ *Id.*

¹⁰ See *John W. Normand*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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