

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

T.L., Appellant	)	
	)	
and	)	<b>Docket No. 11-527</b>
	)	<b>Issued: April 9, 2012</b>
<b>SOCIAL SECURITY ADMINISTRATION,</b>	)	
<b>JOHNSON COUNTY OFFICE, Glendale, AZ,</b>	)	
<b>Employer</b>	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 28, 2010 appellant, through her attorney, filed a timely appeal from a November 18, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 established that she sustained a recurrence of disability commencing on April 5, 2010 causally related to accepted upper extremity conditions.

On appeal, counsel contends that OWCP's November 18, 2010 decision is "contrary to fact and law."

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

OWCP accepted that on or before December 7, 1999 appellant, then a 38-year-old claims representative/social insurance specialist, sustained bilateral carpal tunnel syndrome and bilateral/lateral epicondylitis.<sup>2</sup> It later expanded the claim to accept bilateral median nerve neuritis and right wrist tenosynovitis.

On March 1, 2005 Dr. Michael Zafuta, an attending Board-certified orthopedic surgeon, performed a right median nerve release and a left median nerve release on April 1, 2005. Appellant returned to full-time restricted duty on May 2, 2005. She had intermittent absences through October 2007.

On July 17, 2008 Dr. John B. Moore IV, an attending Board-certified plastic surgeon specializing in surgery of the hand, performed a repeat right median nerve release with open radical tenosynovectomy of the flexor tendons, neurolysis of the median nerve including the palmar cutaneous branch, excision of the accessory flexor tendon and reduction of lumbrical muscle volume. He released appellant to full duty as of September 10, 2008. Dr. Moore submitted reports through February 2009 noting increasing upper extremity pain.

In an August 11, 2009 report, Dr. Moore opined that appellant had reached maximum medical improvement. He permanently limited repetitive upper extremity motion to 30 minutes continuously and no more than 4 hours a day, with a 10-minute break after each 30 minutes of hand use.

On November 24, 2009 appellant claimed a recurrence of disability commencing October 20, 2009. She attributed the recurrence to increased writing and keyboarding at work without sufficient rest breaks.

In a December 16, 2009 statement, the employing establishment noted that an ergonomic analysis of the full-duty claims representative position showed that the job required hand use for 4.3 to 5.6 hours a day, and that a representative's hands were "essentially stationary for 20 plus minutes per hour." To accommodate the accepted conditions, the employer provided appellant with voice-recognition software, dual monitors and adaptive equipment. Appellant performed a full caseload of six interviews a day, with an average typing time of 10 minutes an interview.

In a December 29, 2009 report, Dr. Moore noted persistent left elbow pain but that appellant could continue full-time restricted duty.

By decision dated February 1, 2010, OWCP denied appellant's claim for recurrence of disability on the grounds that she did not establish a change in the accepted conditions or her light-duty job requirements.<sup>3</sup>

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<sup>2</sup> Pursuant to an accepted claim for shoulder impingement, appellant underwent right shoulder arthroscopy and acromioplasty in March 2000.

<sup>3</sup> In a March 4, 2010 letter, appellant requested a review of the written record and reconsideration of OWCP's February 1, 2010 decision. She withdrew her request on April 12, 2010.

In January 29 and February 10, 2010 memoranda, the employing establishment stated that, during a 60-day training period beginning in February 2010, appellant processed four applications each day while learning to use the voice-recognition software. Appellant also used ergonomic office equipment and received assistance with shredding documents. In a March 30, 2010 statement, she asserted that the voice-recognition software increased the time needed to complete interviews.

In a March 4, 2010 report, Dr. Anthony Eidelman, an attending Board-certified anesthesiologist, noted appellant's complaints of continued right hand pain and recommended a right stellate ganglion block.<sup>4</sup>

In an April 2, 2010 report, Dr. Moore reiterated the August 11, 2009 permanent restrictions.

On April 20, 2010 appellant claimed a recurrence of disability commencing April 5, 2010 when the employing establishment withdrew her modified-duty position. She did not stop work. Appellant submitted April 5, 2010 reports from Dr. Eidelman diagnosing chronic pain and tendinitis of the hand and palm. Dr. Eidelman administered an injection into the right palm. In an April 9, 2010 work capacity evaluation (Form OWCP-5c), Dr. Moore renewed previous restrictions and noted that "extended daily typing/computer input is painful."

In April 22 and May 4, 2010 letters, the employing establishment stated that in February 2010 appellant declined three offers of additional training and mentoring regarding the voice-recognition software and stated that she preferred to type. Appellant was allowed to process only four claims a day during the 60-day training period ending April 26, 2010. On March 30, 2010 she told her supervisor that she would no longer use the voice-recognition software and unilaterally withdrew from the accommodations program on April 1, 2010. Therefore, a reduced workload was no longer appropriate. The employer contended that appellant's full-duty job differed only in requiring six interviews a day instead of four, and did not require more than 30 minutes of continuous hand use at one time. Managers monitored appellant's job tasks and did not observe 30 minutes of continuous "typing, 10-keying or writing." Since April 5, 2010, appellant used leave and performed only three out of five scheduled interviews per day.

On May 4, 2010 OWCP obtained a second opinion from Dr. Edward J. Prostic, a Board-certified orthopedic surgeon, regarding the nature and extent of any injury-related residuals. On examination, Dr. Prostic found mild right-sided thoracic outlet syndrome, ulnar nerve entrapment at both wrists and elbows and possible cervical radiculopathy.<sup>5</sup>

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<sup>4</sup> In a March 25, 2010 report, an OWCP medical adviser opined that appellant did not require a stellate ganglion block as she did not have true neuropathic pain.

<sup>5</sup> A May 17, 2010 electromyography (EMG) and nerve conduction velocity (NCV) study showed median mononeuropathy at both wrists indicating moderate carpal tunnel syndrome, no ulnar entrapment or peripheral neuropathy in either upper extremity. It showed slight nerve root irritability in the right C5-6 paraspinals indicative of mild C5-6 radiculitis but not conclusive for cervical radiculopathy.

In a May 11, 2010 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a detailed factual description of how her work duties changed on April 5, 2010. Appellant responded in a May 18, 2010 statement, alleging that on April 5, 2010 management issued a memorandum ordering her to return to full duty or she would be terminated. She contended that she was “forced to leave work after ... four hours of wrist activity every day.”<sup>6</sup>

By decision dated July 23, 2010, OWCP denied appellant’s claim for recurrence of disability on the grounds that causal relationship was not established. It found that she did not submit sufficient evidence establishing either a change in the accepted conditions or a change in her light-duty job such that she could no longer perform it.

In an August 22, 2010 letter, appellant requested reconsideration. She contended that using the voice-activated computer workstation and microphone aggravated her upper extremities. Appellant submitted a September 3, 2010 report from Dr. Moore, who opined that the bilateral carpal tunnel syndrome resolved but that an EMG showed possible C5-6 radiculopathy.<sup>7</sup>

Also submitted was an October 18, 2010 impairment rating from Dr. John Ellis, a Board-certified family practitioner, who rated impairment for each arm and opined that the accepted conditions disabled appellant from August 1, 2010 onward.<sup>8</sup>

By decision dated November 18, 2010, OWCP denied modification on the grounds that the new evidence submitted was insufficient to establish either a change in the accepted conditions or that she could no longer perform the duties of her position as of April 5, 2010.

### **LEGAL PRECEDENT**

OWCP’s implementing regulations define a recurrence of disability as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>9</sup> 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 establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable,

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<sup>6</sup> On May 28, 2010 the employer offered appellant a permanent position as a claims representative, within Dr. Moore’s April 9, 2010 restrictions. Appellant accepted the position on July 14, 2010.

<sup>7</sup> Appellant also submitted documents that did not address her recurrence claim. In October 14, 21 and November 4, 2010 letters, appellant asserted that OWCP mishandled her claims. She submitted billing forms, appointment slips, correspondence regarding a change of physicians and an attorney’s letter of withdrawal from representation.

<sup>8</sup> Appellant claimed a schedule award on October 29, 2010. There is no final decision of record regarding the schedule award claim.

<sup>9</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

probative and substantial evidence, a recurrence of total disability and to show that he or 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 such that the position exceeds the employee's physical limitations.<sup>10</sup> An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>11</sup>

### ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome, bilateral/lateral epicondylitis, median nerve neuritis and right wrist tenosynovitis. Appellant underwent bilateral median nerve releases in 2005 and an open right median nerve release in 2008. Dr. Moore, an attending Board-certified plastic surgeon, noted permanent work restrictions on August 11, 2009 limiting repetitive upper extremity motion to four hours a day and no more than 30 minutes continuously, with a 10-minute break after each half hour of hand use. He reiterated these restrictions on April 2, 2010.

Appellant claimed a recurrence of disability commencing April 5, 2010 when she returned to full duty, increasing her caseload from four to six interviews a day. According to a December 2009 ergonomic analysis, the full-duty customer representative position would require 4.3 to 5.6 hours of hand use per day to complete six interviews. This analysis was performed while appellant was utilizing voice-activation software, dual monitors and adaptive devices provided by the employing establishment. However, appellant refused to use the software and ergonomic equipment as of April 1, 2010, voluntarily increasing the use of her hands. Even so, supervisory observations after April 1, 2010 did not demonstrate that she performed continuous fine motor activities for longer than 30 minutes or otherwise exceeded her work restrictions. Therefore, appellant has not established a change in her job requirements such that she could no longer perform her assigned duties.

Additionally, appellant did not establish that the accepted medical conditions worsened on or about April 5, 2010 such that she was disabled for work. Dr. Eidelman, an attending Board-certified anesthesiologist, provided March 4 and April 5, 2010 reports diagnosing chronic tendinitis of the right hand. In April 2 and 9, 2010 reports, Dr. Moore reiterated prior restrictions. He diagnosed possible C5-6 radiculopathy on September 3, 2010 but did not opine that the radiculopathy was work related. In a May 4, 2010 report, Dr. Prostic, a Board-certified orthopedic surgeon and second opinion physician, found mild right-sided thoracic outlet syndrome, ulnar nerve entrapment at both wrists and elbows and possible cervical radiculopathy. An October 18, 2010, impairment rating from Dr. John Ellis, a Board-certified family practitioner, found appellant disabled for work from August 1, 2010 onward but did not specifically address disability beginning April 5, 2010. Thus, the physicians of record did not opine that appellant was disabled for work as of April 5, 2010 due to the accepted conditions nor did they otherwise explain why appellant would be unable to work due to her accepted conditions.

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<sup>10</sup> *J.F.*, 58 ECAB 124 (2006); *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>11</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

On appeal, counsel contends that OWCP's November 18, 2010 decision is "contrary to fact and law." As stated, appellant did not submit sufficient evidence to establish either a change in her light-duty job requirements such that she could no longer perform the position or a worsening of the accepted conditions disabling her from work on and after April 5, 2010.

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability commencing on April 5, 2010 causally related to accepted upper extremity conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 18, 2010 is affirmed.

Issued: April 9, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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