

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

W.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Elkins Park, PA, Employer**

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**Docket No. 06-754
Issued: November 13, 2006**

Appearances:
Jeffrey P. Zeelander, 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 February 10, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decisions dated September 29, 2005 and January 20, 2006, denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant established a recurrence of disability on or about July 1, 2005 causally related to her accepted work injury of August 25, 2004.

FACTUAL HISTORY

On August 26, 2004 appellant, a 38-year-old letter carrier, filed a traumatic injury claim alleging that on August 25, 2004 she fell down broken steps while delivering mail. She sustained injuries to her right knee, left wrist and hand and right temple. By letter dated October 27, 2004, the Office accepted her claim for left wrist strain, lumbar strain/sprain and right knee contusion.

Appellant was out of work from the date of injury until May 16, 2005, when she returned to part-time limited-duty work.¹ On August 11, 2005 she filed a claim alleging that she sustained a recurrence of disability on July 1, 2005. Appellant explained: "I continued on sedentary duties part time from [May 16 to June 13, 2005]. After starting full duty for approximately one month and decreasing my therapy, I began to ache a little more." The employing establishment noted on the claim form that appellant never returned to full duty, but did return to work eight hours a day. The employing establishment noted that appellant did sedentary duties and delivered express mail, usually flats.

In a medical report dated July 7, 2005, Dr. Roy T. Lefkoe, a Board-certified surgeon, opined:

"The acute effects of the injury of [August 25, 2004] are no longer present. She has multiple continued subjective complaints even though she is limited to office work only. Her subjective complaints do not correlate with any objective physical findings and her Jamar Dynamometry performed today is not valid when compared with the strength with which she gripped my hands on qualitative testing. She has no sign of acute nerve root tension or compression in the upper or lower extremities and has normal reflexes and a negative straight leg raising test."

In a report dated August 11, 2005, Dr. Or Shachar, a Board-certified neurologist, indicated that appellant had a right brachial plexus stretch type injury that continued to cause her significant discomfort for which he prescribed medication.

On August 26, 2005 Dr. Angeloni, a treating osteopath, responded to the employing establishment's questions of August 15, 2005. He indicated that appellant had chronic lumbar disc disease and that the residuals of the August 25, 2004 injury had not resolved. In an attending physician's report (Form CA-20) dated September 13, 2005, Dr. Angeloni noted that appellant was totally disabled from August 26, 2004 to May 9, 2005, partially disabled from May 16 until July 17, 2005 and totally disabled again from July 18 until September 11, 2005. His diagnosis was chronic lumbar disc disease and he checked the box indicating that appellant's condition was caused or aggravated by her employment activity. However, Dr. Angeloni provided no explanation although the form asked him to do so. He noted that appellant was able to resume light work on September 12, 2005.

On September 12, 2005 appellant accepted the employing establishment's offer of light duty and returned to work as a modified city carrier part-time flexible.

By decision dated September 29, 2005, the Office denied appellant's claim for a recurrence of disability.

¹ Appellant's physician, Dr. John Angeloni, an osteopath, had released appellant to light-duty work effective May 9, 2005. She worked until July 18, 2005.

In a July 21, 2005 report, received by the Office on October 3, 2005, Dr. Shachar indicated that appellant had chronic neck and low back pain. He suspected that it was related mostly to muscle spasm and cervical and lumbar sprain and strain type symptoms.

By letter dated October 3, 2005, appellant requested review of the written record by an Office hearing representative. She submitted an August 12, 2005 report from Dr. Lefkoe, who diagnosed: (1) strain, left wrist; (2) contusion, right knee, superimposed upon preexisting mild degenerative arthritis and patellofemoral chondromalacia; (3) lumbosacral sprain/strain; (4) other nonwork-related diagnoses including multilevel cervical degenerative disc disease with moderate right paracentral disc herniation at C4-5 midline disc protrusion at C3-4 and right paracentral disc herniation, C5-6; (5) right frontal meningioma; (6) L5-S1 degenerative disc disease and spondylotic bulging disc; and (7) de Quervain's tenosynovitis, right wrist; status post release by Dr. Sachs, January 31, 2005. He noted that based on the functional capacity evaluation, appellant may require a permanent light-duty position.

On January 20, 2006 the hearing representative affirmed the denial of the recurrence claim.

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 new exposure to the work environment.²

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 to show that she cannot perform such limited-duty work. 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 limited-duty job requirements.³

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁴

² 20 C.F.R. § 10.5(x).

³ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *James H. Botts*, 50 ECAB 265 (1999).

ANALYSIS

The Office accepted that appellant sustained an employment-related left wrist strain, lumbar strain/sprain and right knee contusion on August 25, 2004. Following the August 25, 2004 injury, appellant returned to limited-duty work on May 16, 2005. She claimed a recurrence of disability on July 1, 2005, with work stoppage as of July 16, 2005.

The Board finds that appellant has not established a recurrence of disability on or about July 1, 2005. There is no allegation that there was a change in the nature and extent of the limited-duty job requirements. Instead, appellant alleges that her condition deteriorated after she returned to work full time. However, appellant has not submitted sufficient medical evidence in support of her claims. Dr. Lefkoe indicated on July 7, 2005 that the acute effects of the August 25, 2004 injury were no longer present and that appellant's subjective complaints did not correlate with any objective findings. Accordingly, his report does not support a recurrence of disability. Dr. Shachar did not relate appellant's condition to her accepted injury. Dr. Angeloni noted that appellant was totally disabled from July 18 until September 11, 2005 and checked a box indicating that appellant's disabling chronic lumbar disc disease was related to her employment activity. However, Dr. Angeloni did not provide a rationalized medical opinion addressing the issue of whether appellant's alleged disability commencing July 16, 2005 was due to the accepted injury of August 25, 2004. Accordingly, his opinion is insufficient to meet appellant's burden of proof.⁵

The Board finds that appellant has not submitted sufficiently rationalized medical evidence establishing a recurrence of disability. Therefore, the Board finds that she has not met her burden of proof in this case.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability on or about July 1, 2005 causally related to her accepted work injury of August 25, 2004.

⁵ *Michael E. Smith*, 50 ECAB 313, 317 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 20, 2006 and September 29, 2005 are affirmed.

Issued: November 13, 2006
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