

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

P.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 08-937
Issued: April 20, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On February 11, 2008 appellant filed a timely appeal of a December 17, 2007 merit decision of the Office of Workers' Compensation Programs which denied her claim for 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 met her burden of proof to establish a recurrence of disability on July 12, 2007 causally related to her March 5, 1999 employment injury.

FACTUAL HISTORY

On March 5, 1999 appellant, then a 34-year-old mail processor, sustained injury when her right hand was caught between two mail cars as she tried to stop one from rolling into the other. She was treated that day and returned to work in a light-duty capacity.

The Office accepted the claim for contusion of the right hand, myalgia and myositis on the right and right carpal tunnel syndrome for which appellant underwent surgery. Appellant

worked intermittently in a limited-duty capacity for the period March 7 to May 1, 1999. She stopped work on May 1, 1999 and was released to full duty on June 30, 1999. Appellant had intermittent periods of disability until she underwent carpal tunnel surgery on December 17, 1999. She returned to full duty on March 2, 2000.¹ On February 9, 2005 the Office accepted appellant's claim for a recurrence of myalgia and myositis on November 27, 2004.

On July 26, 2002 appellant accepted a light-duty job offer as a modified mail processor. By decision dated October 1, 2002, the Office found that appellant's actual earnings as a modified mail processor fairly and reasonably represented her wage-earning capacity. It reduced her compensation to zero as her actual wages met or exceeded the wages she held when injured.²

On July 17, 2007 appellant claimed a recurrence of disability as of July 12, 2007 causally related to the March 5, 1999 employment injury. She alleged that she was feeding mail into a machine when her hand and arm became swollen. The employing establishment indicated that appellant stopped work on July 12, 2007 and returned on July 20, 2007. It advised that accommodations were made for her upon returning to work, which included working in the mail unit. Appellant completed a Form CA-7 requesting compensation for wage loss from July 12 to 20, 2007.

By letter dated July 30, 2007, the Office informed appellant of the evidence needed to support her claim. It requested that she submit additional medical evidence within 30 days.

The Office received additional CA-7 forms for periods of disability from July 21 to August 2, August 4 to 17, 18 to 31, and September 3 to 8, 2007.

In a July 12, 2007 report, Dr. Harmeen Chawla, Board-certified in physical medicine and rehabilitation, noted that appellant reported that "last night she had a sudden increase in pain, swelling and increase in spasms, and as a result, had to leave work." She opined that appellant had a myofascial flare-up of the right upper extremity. Dr. Chawla noted that appellant had a history of upper extremity reflex sympathy dystrophy (RSD). She placed appellant off work until July 16, 2007.

The Office received reports dated July 20 to September 12, 2007 from Dr. Chawla, who diagnosed myofascial pain and placed appellant off work. On July 23, 2007 Dr. Chawla noted findings on physical examination of continued swelling in the forearm and fingers, continued neurogenic pain and some spasms. On August 8, 2007 she diagnosed myofascial flare-up of the right upper extremity with no improvement. Dr. Chawla recommended a stellate ganglion block and advised appellant to remain off work.

In an August 19, 2007 report, an Office medical adviser reviewed appellant's history of injury and treatment, noting that none of the physicians of record had diagnosed RSD. The

¹ The record reflects that appellant filed a separate claim for an occupational disease involving her left shoulder on July 31, 2000. However, this claim was denied by the Office under File No. xxxxxx020.

² This decision was affirmed by the Office hearing representative on September 22, 2003.

Office medical adviser indicated that there were no diagnostic findings to support that appellant's current complaints of pain in the right arm were work related and described her pain as "subjective." The Office medical adviser also indicated that her ganglion block treatments were not appropriate.³

In a report received by the Office on August 20, 2007, Dr. Chawla opined that appellant's myofascial syndrome involved soft tissue injury to the right shoulder girdle and arm, which was a "combination of the entire right upper extremity." In attending physician's reports dated August 22 and 29, 2007, she found that appellant was totally disabled and unable to work. On September 5, 2007 Dr. Chawla noted that appellant was improving and could return to work as of September 10, 2007. In a September 12, 2007 report, she opined that appellant had a "regular permanent restriction with frequent rest breaks for stretching."

In several statements, appellant alleged that she had myofascial pain syndrome, which was a chronic pain disorder. She denied having any other injuries to her arm since the March 5, 1999 injury. Appellant contended that she had never made a complete recovery and that her arm never returned to normal. On August 10, 2007 she stated that she performed repetitive lifting at work which caused her arm to become swollen. Appellant went to a nurse, who indicated that it was from the original injury. On September 14, 2007 she requested that the Office address her claim. Appellant alleged that the only difference in this recurrence was that her physician requested authorization for ganglion blocks and acupuncture.

On September 24, 2007 the Office referred appellant for a second opinion to Dr. John A. Gragnani, Board-certified in physical medicine and rehabilitation. In an October 8, 2007 report, Dr. Gragnani noted appellant's history of injury and treatment. He conducted a physical examination and found no evidence of swelling, redness, deformity, contracture or any other signs of vascular or neurologic malfunction of either upper extremity. Dr. Gragnani advised that appellant had subjective complaints of right upper extremity pain by history, a normal examination of the right upper extremity and no evidence of myofascial pain or complex regional pain syndrome. He stated that appellant had "subjective complaints only" and there was no objective evidence of injury or disease for which causation could be established. Dr. Gragnani advised that no further medical treatment was required.

The Office found a conflict in medical opinion between Drs. Chawla and Gragnani as to whether appellant had disability or residuals of her accepted condition.

On October 29, 2007 the Office referred appellant, together with a statement of accepted facts and the medical record to Dr. Stephen Benz, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a November 14, 2007 report, Dr. Benz reviewed appellant's history of injury and treatment. On physical examination of the upper extremities, he found full range of motion of the right shoulder, elbow, wrist and hands. Dr. Benz found no evidence of erythema, induration

³ In a decision dated August 20, 2007, the Office denied appellant's request for authorization to perform stellate ganglion blocks and informed her that a second opinion examination was currently being arranged. Appellant did not seek review of this decision.

or swelling. He advised that she had “nice palpable radial pulses” and strength of 5/5 with intact sensation. Dr. Benz explained that appellant’s symptoms were strictly subjective and that he could not make any objective findings. He noted that she did not differentiate any one particular area when she experienced pain. Dr. Benz determined that appellant’s examination was totally normal. He found no evidence of any RSD. Dr. Benz noted that appellant had recurrences every year, and that he did “not believe that there is anything that can be done to reduce this.” He added that this was a “strictly subjective finding. I do not think that there is anything objective going on here.” Dr. Benz advised that it would be counterproductive to take appellant away from her current work restrictions, which would in all likelihood increase her subjective symptoms.

By decision dated December 17, 2007, the Office denied appellant’s claim for a recurrence of disability beginning July 12, 2007. It found that the factual evidence did not establish that the claimed recurrence resulted from the accepted work injury.

LEGAL PRECEDENT

Section 10.5(x) of the Office regulations provides that 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”⁴

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, 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.⁵

Causal relationship is a medical issue,⁶ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.⁷ The physician’s opinion must be based on a complete factual and medical background of the claimant, must be

⁴ *J.F.*, 58 ECAB ____ (Docket No. 06-186, issued October 17, 2006); *Elaine Sneed*, 56 ECAB 373, 379 (2005); 20 C.F.R. § 10.5(x).

⁵ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁷ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS

The Office accepted that appellant sustained a contusion of the right hand, myalgia and myositis on the right, right carpal tunnel syndrome and surgical release. Appellant returned to work in a light-duty capacity as a modified mail processor on July 26, 2002. On February 9, 2005 the Office accepted appellant's claim for a recurrence of myalgia and myositis on November 27, 2004. Appellant subsequently filed a claim for a recurrence of disability commencing July 12 to September 5, 2007.

The Office determined that a conflict in medical opinion arose between Dr. Chawla, appellant's physician, and Dr. Gragnani, regarding the extent of any residuals and disability. It referred appellant to Dr. Benz, a Board-certified orthopedic surgeon and impartial medical examiner, to resolve the conflict.

Section 8123 of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.⁹ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰

The Office properly referred appellant to Dr. Benz, who reviewed appellant's history of injury and treatment. Dr. Benz conducted a physical examination and found that appellant had full range of motion of the right shoulder, elbow, wrist and hands, with no evidence of erythema or swelling. He determined that appellant's symptoms were subjective and that he could not make any objective findings regarding her right upper extremity. Dr. Benz determined that appellant's examination was totally normal and noted that further medical treatment was not warranted. He did not find any disability attributable to her March 5, 1999 work injury.

The Board finds that Dr. Benz provided a detailed and well-rationalized report based on a proper factual background and thus his opinion is entitled to the special weight accorded an impartial medical examiner. Dr. Benz's report is sufficient to resolve the conflict of medical opinion between Dr. Chawla, and Dr. Gragnani, regarding nature and extent of disability and residuals of her accepted conditions. Appellant did not provide any additional medical evidence to overcome the report of Dr. Benz. The evidence does not support that there was a change in

⁸ Gary L. Fowler, 45 ECAB 365, 371 (1994).

⁹ 5 U.S.C. § 8123; see Charles S. Hamilton, 52 ECAB 110 (2000).

¹⁰ Jacqueline Brasch (Ronald Brasch), 52 ECAB 252 (2001).

the nature and extent of appellant's light-duty job requirements during the period in which recurrent disability is claimed.

For these reasons, the Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing July 12, 2007 causally related to her March 5, 1999 employment injury.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning July 12, 2007 causally related to the March 5, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2009
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