

FACTUAL HISTORY

On December 13, 2005 appellant, then a 46-year-old mail handler, sustained an employment-related right rotator cuff sprain/strain while pulling a sack of mail.² She stopped work that day and returned to limited duty for eight hours a day on May 29, 2006. OWCP accepted that appellant sustained a recurrence of disability on September 21, 2006 and she was placed on the periodic compensation rolls.

OWCP referred appellant to Dr. Robert Franklin Draper, Jr., a Board-certified orthopedic surgeon, and in a February 1, 2007 report, Dr. Draper provided examination findings and diagnosed impingement syndrome of the right shoulder with partial tear of the supraspinatus tendon and cervical strain with disc herniations at C2 through C6. Dr. Draper advised that appellant could perform light-duty work with restrictions to her physical activity. Appellant's claim was expanded to include temporary aggravation of degenerative cervical disc disease. On August 6, 2007 Dr. John M. Fenlin, a Board-certified orthopedic surgeon, performed acromioplasty and right rotator cuff repair. In reports dated December 20, 2007 to February 26, 2009, Dr. Dennis W. Ivill, a Board-certified physiatrist who is an associate of Dr. Fenlin, provided examination findings, diagnosed C6 cervical radiculopathy and rotator cuff tear. He advised that appellant could not work.

An April 6, 2009 functional capacity evaluation was reported as invalid due to sub-maximal effort. On May 20, 2009 Dr. Ivill advised that appellant could return to a restricted-duty position for eight hours daily with sitting and standing at will, pushing 1 pound and pulling and lifting 10 pounds. Appellant returned to a modified mail handler position on June 23, 2009. The duties of the position consisted of rewrapping packages while sitting or standing in front of a conveyor belt using a gun and debris-sorting letters and flats and placing them into tubs and trays. Lifting was restricted to 10 pounds. On June 29, 2009 OWCP reduced appellant's monetary compensation to zero, effective June 23, 2009, based on her actual earnings in the modified mail handler position and by decision dated December 3, 2009, determined that her actual wages in the modified mail handler position fairly and reasonably represented her wage-earning capacity.³

On December 7, 2009 appellant filed a recurrence claim, alleging that the recurrence occurred on November 18, 2009 when she stopped work. She noted that she returned to limited duty in pain and that on November 18, 2009 pain, numbness, tingling and burning in her neck, that extended into her right arm, wrist and hand, became unbearable. Appellant submitted a November 11, 2009 report in which Dr. Ivill noted her complaint of a flare-up of neck and right upper extremity pain. Dr. Ivill provided physical examination findings and advised that she could work full time in a modified position with a 10-pound weight restriction. An employing

² The record indicates that, at the time the claim was filed, appellant was working modified duty for an accepted left hand tendinitis, adjudicated by OWCP under number xxxxxx567.

³ On April 19, 2010 appellant filed an appeal with the Board of the December 2, 2009 decision, assigned Docket No. 10-1407, that proceeded to adjudication separately. The record also contains an April 22, 2010 decision denying her schedule award claim. On January 20, 2011 appellant requested reconsideration with OWCP of the April 22, 2010 decision.

establishment supervisor advised that, over the few weeks prior to the weeks prior to the recurrence claim being filed, appellant was spending a lot of time away from her assignment and was reprimanded on November 14, 2009 for being away from her duties for an extended period of time.

In letters dated December 14 and 15, 2009, OWCP informed appellant of the evidence needed to support her claim. An unsigned disability slip from the office of Dr. Rita Carabello, an osteopath who practices family medicine, advised that appellant had been under her care from November 18, 2009 and could not work due to nerve damage and rotator cuff injury. In a December 29, 2009 attending physician's report, she diagnosed cervical degenerative joint disease and degenerative disc disease with arm neuropathy, aggravated by repetitive motion of the right arm. Dr. Carabello advised that appellant should not return to work until evaluated by pain management. By report dated January 7, 2010, he noted examination findings of right-sided weakness and swelling around the wrist joint when appellant was seen in November 2009 and that on January 5, 2010 appellant still had a significant amount of swelling in her right hand. Dr. Carabello advised that the question of when appellant could return to work should be left to the pain specialist.

By decision dated January 19, 2010, OWCP denied appellant's claim on the grounds that the medical evidence did not establish that the claimed recurrence resulted from the employment injury. On February 8, 2010 appellant requested a hearing and submitted an unidentified, unsigned December 15, 2009 report. In a January 13, 2010 report, Dr. Jeffrey North, a Board-certified physiatrist, provided examination findings. His diagnoses included right neck pain, cervical-brachial syndrome, likely right carpal tunnel syndrome and possible carpometacarpal arthropathy.⁴ In a February 15, 2010 report, Dr. Leonard B. Kamen, an osteopath who practices physical medicine and rehabilitation, noted appellant's complaint of severe right-sided neck pain radiating into the arm and radial aspect of the hand with numbness and tingling. He provided physical examination findings, noting no evidence of progressive atrophy or dystrophic appearance of the upper extremities distally and no indication of a focal neurologic loss with reflex, motor or sensory testing and hypersensitivity to palpation of the upper neck and shoulder girdle. Right shoulder motion was restricted and painful and the carpometacarpal joints of both hands were tender, right worse than left. Dr. Kamen advised that, as appellant had no change in her condition since being off work, she could return to limited duty on March 1, 2010.

At the video hearing, held on May 19, 2010, appellant testified that she stopped work because the pain became unbearable and that Dr. Carabello initially took her off work until she could be seen by Dr. Kamen, who kept her off work until she returned on March 1, 2010. She thereafter submitted a February 15, 2010 disability slip in which Dr. Kamen advised that she could return to work on March 1, 2010 regarding her right shoulder and brachial plexus injury. In a June 7, 2010 report, Dr. Carabello advised that first saw appellant on November 25, 2009 for increasing pain in her right arm and hand. She stated that physical examination demonstrated swelling of the right hand, especially the thumb, along with weakness of the right upper extremity. Dr. Carabello noted that appellant stated that her job involved wrapping and unwrapping letters and opined that this would aggravate the hand and arm. She stated that she

⁴ Portions of the report are illegible.

advised appellant not to return to work until seen by her pain specialists on December 15, 2009 because, in her medical opinion, the excessive use of appellant's hand at work would only make her condition worse.

By decision dated July 13, 2010, OWCP's hearing representative affirmed the January 19, 2010 decision.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ This term also means an inability to work 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.⁶

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, light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁷

The Board has held that OWCP may accept a limited period of disability without modifying a standing wage-earning capacity determination. This occurs when there is a demonstrated temporary worsening of a medical condition of insufficient duration and severity to warrant modification of a wage-earning capacity determination. This narrow exception is only applicable for brief periods of medical disability.⁸

ANALYSIS

The Board finds that appellant has not established a recurrence of total disability on November 18, 2009 causally related to the December 13, 2005 employment injury because she did not establish that the nature and extent of her injury-related condition changed on November 18, 2009 so as to prevent her from continuing to perform her limited-duty assignment or establish that her light-duty restrictions were exceeded.

⁵ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁶ *Id.*

⁷ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁸ See *Katherine T. Kreger*, 55 ECAB 633 (2004).

The accepted conditions in this case are right rotator cuff sprain/strain and temporary aggravation of cervical degenerative disc disease. Appellant stopped work on November 18, 2009, asserting that pain in her neck and right upper extremity became so unbearable that she could not work. Her modified duties consisted of rewrapping packages while sitting or standing in front of a conveyor belt using a gun and debris-sorting letters and flats and placing them into tubs and trays. Lifting was restricted to 10 pounds.

While Dr. Ivill, an attending physician, noted on November 11, 2009 that appellant complained of a flare-up in neck and right upper extremity pain, he advised that she could work full time with a 10-pound weight restriction. Dr. North merely provided examination findings and did not discuss her ability to work. Their reports are therefore insufficient to establish that appellant sustained a recurrence of disability on November 18, 2009.

Dr. Carabello first advised on December 29, 2009 that appellant's cervical degenerative disc disease with neuropathy was aggravated by repetitive motion of the right arm and on January 7, 2010 she noted continued examination findings of weakness and swelling about the right wrist joint, present since November 2009. She, however, advised that appellant's return to work date should be left to a pain specialist and on February 15, 2010, Dr. Kamen, a pain specialist, advised that, as appellant had no change in her condition after being off work, she could return to work on March 1, 2010. Dr. Carabello later advised on June 7, 2010 that she began treating appellant on November 25, 2009 and advised that the excessive use of appellant's hand at work would only make her condition worse. Permanent aggravation of degenerative disc disease of the cervical spine has not been accepted by OWCP and Dr. Carabello did not explain why the accepted employment injuries or employment factors caused appellant to stop work. Dr. Carabello's opinion is therefore of diminished probative value and insufficient to meet appellant's burden.⁹

Appellant did not assert that she was working outside her restrictions or that her modified assignment changed. It is her burden of proof to submit the necessary medical evidence to establish a claim for a recurrence.¹⁰ The record does not contain a medical report providing a reasoned medical opinion that appellant's claimed recurrence of disability was caused by the December 13, 2005 employment injury.¹¹

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 did not establish that she sustained a recurrence of total disability on November 18, 2009 causally related to a December 13, 2005 employment injury.

⁹ *Supra* note 7.

¹⁰ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ *Cecelia M. Corley*, 56 ECAB 662 (2005).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2011
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