

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

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**M.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Baltimore, MD, Employer**

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**Docket No. 11-880  
Issued: November 23, 2011**

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

*Case submitted on the record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 22, 2011 appellant filed a timely appeal from the January 20, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her claim for a recurrence of disability. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> 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 met her burden of proof to establish a recurrence of partial disability beginning November 29, 2010 causally related to her July 15, 2008 employment injury.

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

## **FACTUAL HISTORY**

On July 15, 2008 appellant then a 41-year-old letter carrier, filed a traumatic injury claim alleging that, on that date, she was holding a tray of mail and wrenched her left shoulder trying to avert a fall. She stopped work on July 15, 2008. On September 15, 2008 OWCP accepted a torn rotator cuff of the left shoulder. Appellant returned to limited duty on September 19, 2008. She underwent left shoulder arthroscopy and repair, distal clavicle resection, subacromial decompression and insertion of pain pump on November 3, 2008. Appellant returned to modified work on February 10, 2009.<sup>2</sup> On September 22, 2010 OWCP accepted cervical radiculitis.<sup>3</sup>

In developing the claim, OWCP referred appellant for a second opinion examination with Dr. Kevin Hanley, a Board-certified orthopedic surgeon. In a September 1, 2010 report, Dr. Hanley noted examining appellant and found that she could work with permanent restrictions which included a pushing, pulling and lifting restriction of no more than 20 pounds.

A November 22, 2010 magnetic resonance arthrogram of the left shoulder read by Dr. Krista McFarren, a Board-certified diagnostic radiologist, found a subtle, partial articular surface tear at the insertion of the infraspinatus that involved less than 50 percent of the tendon's thickness. There was no other abnormality of the rotator cuff region.

In a November 29, 2010 reports, from Dr. Gayatri Sonti, an osteopath, diagnosed a herniated disc at C6-7 mild, cervical pain and cervical radiculopathy. He advised that appellant should not work from November 29 to December 10, 2010. Dr. Sonti attached a November 13, 2010 cervical spine magnetic resonance imaging (MRI) scan report that found a stable moderate left lateral disc herniation at C6-7 and stable mild degenerative changes. On November 30, 2010 an OWCP field nurse advised that appellant stopped work effective November 29, 2010.

In a letter dated November 30, 2010, OWCP notified appellant that it had learned that she had a new period of total disability starting on or about November 29, 2010. It asked that she clarify whether she was filing for a new injury or a recurrence of disability and submit the appropriate form and documentation.

In a December 2, 2010 report, Dr. Jason M. Scopp, a treating orthopedic surgeon, diagnosed left shoulder biceps tendinopathy recalcitrant status post "S/P November 3, 2008 slap repair" (superior labrum anterior to posterior). In a December 2, 2010 disability certificate, Dr. Scopp noted that appellant could return to restricted work on December 13, 2010. He provided permanent restrictions which included no overhead work, no repetitive tasks and no lifting over 10 pounds.

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<sup>2</sup> On February 1, 2010 OWCP granted appellant a schedule award for 12 percent permanent impairment of the left upper extremity.

<sup>3</sup> Appellant claimed a recurrence of disability on January 12, 2010. She stopped work for two days before returning to modified work. OWCP accepted that appellant sustained a recurrence and requested that she claim compensation for any lost time from work. Appellant claimed wage-loss compensation for August 18 and September 21, 2010. OWCP paid wage-loss compensation for September 21, 2010 and she was in receipt of schedule award compensation for August 18, 2010.

A December 8, 2010 electromyography scan from Dr. Giovanni P. David, an internist, revealed left distal median neuropathy, carpal tunnel syndrome with evidence of both motor and sensory fiber involvement and no evidence of significant left ulnar neuropathy or cervical radiculopathy.

In a December 6, 2010 attending physician's report, Dr. Sonti placed appellant off work from November 29 to December 10, 2010. He diagnosed a central and left herniated disc at C6-7. Dr. Sonti checked the box "no" in response to whether he believed the condition was caused or aggravated by an employment activity. In a disability certificate also dated December 10, 2010, he indicated that appellant could return to full duty on December 15, 2010 with no lifting over 10 pounds and no repetitive movement.

On December 10, 2010 appellant filed a (Form CA-2a), recurrence of disability notice. She alleged that on November 29, 2010 she sustained disability and "continuous pain since returning to work, weakness in my arm and pain in my left arm, shoulder and neck. I have three sets of needles in my c-spine and 2 — in shoulder." Appellant further noted that her November 2010 MRI scans revealed a herniated disc at C6-7 and a shoulder tear and thinning of her biceps tendon.<sup>4</sup>

In a December 14, 2010 surgical report, Dr. Conworth Dayton-Jones, a Board-certified anesthesiologist, diagnosed chronic pain recurrent left neck and shoulder pain greater than right. He performed cervical epidural steroid injections.

In a December 20, 2010 attending physician's report, Dr. Scopp diagnosed shoulder biceps tendinopathy, recalcitrant "S/P 11/08 slap repair." He placed appellant off work from November 29 to December 14, 2010. Dr. Scopp advised permanent restrictions of no overhead work, no repetitive tasks, no lifting over 10 pounds.

By decision dated January 20, 2011, OWCP denied appellant's claim for compensation for a recurrence of disability beginning on November 29, 2010.

### **LEGAL PRECEDENT**

Section 10.5(x) of OWCP's regulations provide 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. The 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 (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.<sup>5</sup>

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<sup>4</sup> Appellant returned to limited-duty work on December 15, 2010.

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

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 substantive 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 light-duty job requirements.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.<sup>7</sup> 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.<sup>8</sup> The physician's opinion must be based on a complete factual and medical background of the claimant, must be 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.<sup>9</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.

### ANALYSIS

Appellant's claim was accepted for torn rotator cuff left shoulder, left shoulder arthroscopy and repair, distal clavicle resection, subacromial decompression and cervical radiculitis.

Appellant subsequently alleged a recurrence of partial disability on November 29, 2010. On November 30, 2010 OWCP advised her of the medical and factual evidence needed to establish her claim for a recurrence of disability.

Appellant has not alleged a change in the nature and extent of her light-duty job requirements. She must thus provide medical evidence establishing that she was disabled due to a worsening of her accepted work-related conditions.<sup>10</sup>

The Board notes that Dr. Sonti provided a December 6, 2010 attending physician's report, in which he placed appellant off work from November 29 to December 10, 2010. Dr. Sonti diagnosed a central and left herniated disc at C6-7 and checked the box "no" in

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<sup>6</sup> *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>7</sup> *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

<sup>8</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

<sup>9</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

<sup>10</sup> *Jackie D. West*, 54 ECAB 158 (2002); *Hedman*, *supra* note 6 at 222 (1986).

response to whether he believed the condition was caused or aggravated by an employment activity. The Board notes that a herniated disc is not an accepted condition and this report supports that the condition is not work related. Other reports from Dr. Sonti note appellant's diagnoses and disability but do not support that her disability is due to her accepted conditions.

Appellant provided reports from Dr. Scopp. In a December 2, 2010 disability certificate, Dr. Scopp advised that she could return to work on December 13, 2010. However, he did not offer any opinion as to the cause of any disability commencing on November 29, 2010. The December 20, 2010 attending physician's report contained a diagnoses which included shoulder biceps tendinopathy, recalcitrant "S/P 11/08 slap repair" and noted that appellant was disabled from November 29 to December 14, 2010. Again, Dr. Scopp did not offer any opinion to support that her disability beginning November 29, 2010 was due to a worsening of her accepted work-related conditions. Other reports from him also do not address the accepted conditions are the cause of appellant's disability during the period at issue. Thus, these reports are of limited probative value.<sup>11</sup>

Likewise other medical reports, including reports of diagnostic testing and disability certificates, are insufficient to establish appellant's claimed recurrence of disability beginning November 29, 2010 because these reports do not specifically address whether her disability during the period at issue is due to the accepted conditions. Thus, these reports do not support a recurrence of disability on November 29, 2010.

As appellant has not submitted medical evidence showing that her disability beginning November 29, 2010 was due to a spontaneous change in her accepted conditions, she has not met her burden of proof in establishing that she sustained a recurrence of disability.

On appeal, appellant asserts that her recurrence includes a herniated disc and is work related. OWCP adjudicated whether she had a recurrence of disability beginning November 29, 2010 due to her accepted conditions. As noted, appellant did not meet her burden of proof to establish a recurrence of disability due to insufficient medical evidence.<sup>12</sup>

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 meet her burden of proof to establish a recurrence of disability beginning November 29, 2010 causally related to her July 15, 2008 employment injury.

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<sup>11</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>12</sup> If appellant is seeking an expansion of accepted conditions in her claim, she should contact OWCP regarding this matter. As OWCP did not adjudicate claim expansion in its January 20, 2011 decision, the Board does not have jurisdiction over this matter. *See* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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