

head up and down. Appellant did not stop work, but began working in a light-duty position.¹ The Office accepted that appellant sustained cervical, thoracic and lumbar strains on June 21, 2004.

In a report dated March 21, 2005, Dr. H. Gerard Siek, Jr., an attending Board-certified orthopedic surgeon, stated that appellant had improved with regard to the acute sprains of her cervical and lumbar spine but had developed myofascitis due to the bending, twisting and squatting required of her work. Dr. Siek indicated that appellant had developed chondromalacia of the patella of the right knee in early January 2005 “as a result of excessive bending and squatting to protect her neck and back.” He stated: “As far as the neck and back are concerned, the patient no longer needs any supervised physical therapy, but needs to minimize her neck bending and twisting and spend more time at sedentary activity at work.”²

Appellant stopped work for the period May 14 to June 9, 2005 and claimed that she sustained a recurrence of total disability during this period due to her June 21, 2004 employment injury.

In a form report dated May 9, 2005, Dr. Siek stated that appellant should not work for the period May 13 to June 9, 2005 and that she could return to work on June 10, 2005 with the same restrictions as before but with no overtime work or lifting more than 15 pounds.³

By letter dated June 1, 2005, the Office requested that appellant submit additional medical evidence in support of her recurrence of disability claim.

In a report dated June 9, 2005, Dr. Siek stated that appellant had worked in pain everyday for the prior year and noted:

“She was n[o]t pain free on May 10 and 11, 2005 and suddenly in discomfort on May 12 and 13, 2005. We talked to her about taking off work for one month, starting on May 10, 2005 and she stated that she would like to work those two days before her two days off because of her consideration for her supervisor and fellow employees.... The reason the patient is having so much discomfort in her job is that she has been sorting and casing mail for 8 hours a day over the past year, having to bend over, lift up a tray of 500 letters and mail about every 20 minutes, all day long.... This involves a great deal of twisting, bending, lifting

¹ Appellant was restricted from lifting more than 20 pounds. Her claim was given the file number 062117284.

² In a report dated December 6, 2004, Dr. Siek stated that appellant had chronic carpal tunnel syndrome of both hands.

³ Dr. Siek did not provide a diagnosis but indicated that appellant reported neck, back and shoulder pain and tingling in both legs.

and raising her arms above shoulder height, all of which have produced the pain she is complaining about in her neck, upper mid back, lower back and both shoulders, plus tingling sensations in her legs.”⁴

In a report dated June 13, 2005, Dr. Siek stated that appellant attributed her knee problems to bumping her knees against packages at work for the past six years or more. He diagnosed patellar chondromalacia and joint effusion of both knees.

In a report dated July 7, 2005, Dr. Siek made comments regarding appellant’s work stoppage, which were similar to those made in his June 9, 2005 report. He stated:

“The time off work for [appellant] was a continuation of treatment for her cervical spine and lower back injury, case number 062117284. This is not due to a new injury; it is a prophylactic (preventive or protective) restriction. Anytime I put a patient in a ‘no work status,’ it is for the employee’s and employer’s protection and to prevent further injury.

“[Appellant’s] condition from her previous injury, number 062117284, had put her in a lot of pain due to her ongoing work at the [p]ost [o]ffice. I diagnosed her condition as critical and she needed to rest her back to prevent any additional injury.”

By decision dated October 30, 2005, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability from May 14 to June 9, 2005 due to her June 21, 2004 employment injury.

Appellant requested an oral hearing before an Office hearing representative, which was held on April 5, 2006. She testified that prior to June 21, 2004, apart from some pain in her low back, she had not experienced neck or shoulder pain or tingling in her legs. Appellant stated that she had filed other claims relating to her knee condition and tendinitis in her wrists.

In a November 3, 2005 form report, Dr. Siek stated that she could perform light-duty work with limited restrictions and posited that she only required physical therapy on an as needed basis.

By decision dated and finalized May 30, 2006, the Office hearing representative affirmed the October 30, 2005 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish

⁴ Dr. Siek stated that appellant reported being almost totally pain free for the past two weeks or more and noted: “She says her hands are now asymptomatic because she has not done anything to aggravate her carpal tunnel problem.” In a form report dated June 9, 2005, Dr. Siek stated that appellant should limit casing and sorting to four hours per day and should not sit, stand or walk for more than two hours per day for each activity.

by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that 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

ANALYSIS

The Office accepted that appellant sustained cervical, thoracic and lumbar strains on June 21, 2004. Appellant stopped work for the period May 14 to June 9, 2005 and claimed that she sustained a recurrence of total disability during this period due to her June 21, 2004 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability from May 14 to June 9, 2005 due to her June 21, 2004 employment injury.

In a June 9, 2005 report, Dr. Siek, an attending Board-certified orthopedic surgeon, stated that appellant reported that she had worked in pain everyday for the prior year. He noted that he talked to her about taking off work for one month starting on May 10, 2005, but that she indicated that she would like to work May 10 and 11, 2005 out of consideration for her supervisor and fellow employees. Dr. Siek stated: "The reason the patient is having so much discomfort in her job is that she has been sorting and casing mail for 8 hours a day over the past year, having to bend over, lift up a tray of 500 letters and mail about every 20 minutes, all day long.... This involves a great deal of twisting, bending, lifting and raising her arms above shoulder height, all of which have produced the pain she is complaining about in her neck, upper mid back, lower back and both shoulders, plus tingling sensations in her legs."⁶

This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion that appellant sustained a recurrence of total disability from May 14 to June 9, 2005 due to her June 21, 2004 employment injury.⁷ Dr. Siek did not provide any discussion of appellant's June 21, 2004 employment injury or explain how it caused her condition to worsen such that she was unable to work between May 14 and June 9, 2005. He did not describe specific findings on examination or diagnostic testing which would establish a worsening in her condition that was related to the accepted injuries, cervical, thoracic and lumbar strains.⁸ Dr. Siek suggested that appellant sustained a new injury due to performing her work

⁵ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ Dr. Siek noted: "She says her hands are now asymptomatic because she has not done anything to aggravate her carpal tunnel problem."

⁷ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not relate a claimed condition to accepted employment factors is of limited probative value on the issue of causal relationship).

⁸ In a form report dated May 9, 2005, Dr. Siek stated that appellant should not work for the period May 13 to June 9, 2005 and that she could return to work on June 10, 2005 with the same restrictions as before but with no overtime work or lifting more than 15 pounds. He provided no explanation for this opinion on disability.

duties over a period of time, but appellant has not filed such an occupational disease claim and this matter is not the subject of the present claim.⁹

In a report dated July 7, 2005, Dr. Siek made comments regarding appellant's work stoppage, which were similar to those made in his June 9, 2005 report, but also stated that her time off work was a continuation of treatment for the June 21, 2004 injury. He noted: "This is not due to a new injury; it is a prophylactic (preventive or protective) restriction. Anytime I put a patient in a 'no work status,' it is for the employee's and employer's protection and to prevent further injury." This report is of limited probative value on the relevant issue of the present case in that it contains an opinion on causal relationship which is equivocal in nature.¹⁰ Dr. Siek appears to give contradictory opinions regarding the cause of appellant's continuing complaints. On one hand, he repeated his assertion that appellant sustained a new occupational disease due to engaging in work duties overtime. On the other hand, he stated that her problems were related to her June 21, 2004 injury. Dr. Siek did not explain how appellant's June 21, 2004 employment injury could have caused her condition to worsen such that she was unable to work between May 14 and June 9, 2005. It appears that Dr. Siek's placement of appellant off work was due to fear of a future injury, but it is well established that the possibility of future injury constitutes no basis for the payment of compensation.¹¹

Therefore, appellant has not shown a change in the nature and extent of her injury-related condition. She did not allege or otherwise show a change in the nature and extent of her light-duty job requirements.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability from May 14 to June 9, 2005 due to her June 21, 2004 employment injury.

⁹ Nor did Dr. Siek otherwise present an opinion with sufficient medical rationale to support the occurrence of such a new injury. He also did not adequately explain what role appellant's knee chondromalacia and bilateral carpal tunnel syndrome played in her claimed inability to work.

¹⁰ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

¹¹ *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 30, 2006 and October 30, 2005 decisions are affirmed.

Issued: October 6, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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