

pending arthroscopic surgery. On October 11, 2005 appellant underwent left shoulder arthroscopic surgery consisting of subacromial decompression. In a report dated January 9, 2006, Dr. Martin stated that appellant could return to work on January 17, 2006 with no use of her left arm for four weeks.

In a January 17, 2006 report, Dr. Matthew E. Mitchell, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition and findings on physical examination. He diagnosed left rotator cuff tendinitis impingement and status post left shoulder arthroscopy with decompression. Dr. Mitchell stated that appellant had diminished left shoulder range of motion and strength due to her left shoulder condition but was capable of performing light-duty work for eight hours a day. He indicated work restrictions of no more than two hours of reaching above the left shoulder, no more than two hours of pushing, pulling or lifting of 20 pounds on the left and no driving at work.

On January 17, 2006 appellant began performing a limited-duty job with restrictions of no use of the left arm and no driving.

In a report dated January 26, 2006, Dr. Martin noted that a left shoulder post subacromial decompression had been performed three months earlier. Appellant returned to work but began experiencing left shoulder symptoms. Dr. Martin stated that appellant should be off work for three weeks. On February 15, 2006 he indicated that appellant could return to work on February 21, 2006 for four hours a day with no lifting over 10 pounds and increase her workday to eight hours after the first week. On February 22, 2006 appellant began working four hours a day, increased to eight hours the following week, with no overhead work and no pushing, pulling, lifting or carrying over 10 pounds. On March 2, 2006 Dr. Martin noted that appellant had been performing light duty for the past two weeks but had developed a left-sided cervical strain. He recommended light duty for four hours a day with no overhead work, no pushing, pulling or lifting of more than 10 pounds for four weeks.

On March 30, 2006 appellant filed a claim for disability for the period January 25 to March 24, 2006.

In a May 2, 2006 report, Dr. James D. Fontaine, a Board-certified physiatrist, provided findings on physical examination and diagnosed chronic cervicalgia, cervical spondylosis and status post left shoulder subacromial decompression. He opined that appellant could perform light-duty work for six hours a day.

By decision dated July 6, 2006, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a recurrence of total disability for the period January 25 to March 24, 2006 causally related to her February 27, 2004 employment injury.¹

¹ Appellant submitted additional evidence subsequent to the Office decision of July 6, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

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 by the weight of the reliable, probative and substantial evidence a recurrence of total disability and that she cannot perform the light-duty position. 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 job requirements.²

A recurrence of disability is defined under the Office's implementing federal regulations as the 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.³

ANALYSIS

Appellant has the burden to provide medical evidence establishing that she was totally disabled or partially disabled (disabled for less than eight hours a day) for the period January 25 to March 24, 2006 due to a worsening of her accepted work-related condition, left rotator cuff tendinitis impingement or a change in her job duties such that she was unable to perform her light-duty work.

On January 9, 2006 Dr. Martin stated that appellant could return to work as of January 17, 2006 with no use of her left arm for four weeks. On January 17, 2006 appellant began performing a light-duty job within the restrictions from Dr. Martin. On January 26, 2006 Dr. Martin noted that appellant had returned to work following surgery three months earlier but began to experience left shoulder symptoms. He stated that appellant should be off work for three weeks pending reevaluation. However, Dr. Martin provided insufficient medical rationale explaining why appellant could not perform her light-duty job, which did not require use of her left arm. This report is insufficient to establish that appellant had a recurrence of total or partial disability beginning January 25, 2006 causally related to her accepted left shoulder injury. On February 15, 2006 Dr. Martin indicated that appellant could return to work for four hours a day on February 21, 2006 with no lifting over 10 pounds, with an increase to eight hours a day after the first week. However, he did not provide sufficient explanation as to why she could not work eight hours a day for the first week. On February 22, 2006 appellant began working four hours a day and eight hours the following week within Dr. Martin's restrictions. On March 2, 2006 Dr. Martin noted that appellant had been performing light duty for the past two weeks but had developed a left-sided cervical strain. He recommended light duty for four hours a day. A cervical strain is not an accepted condition in this case. As Dr. Martin indicated that the change in appellant's recommended work hours from eight hours to four hours was due to a cervical condition, this report does not support her claim for a recurrence of disability causally

² *Bryant F. Blackmon*, 57 ECAB ____ (Docket No. 04-564, issued September 23, 2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ 20 C.F.R. § 10.5(x).

related to her accepted left shoulder condition. His reports are insufficient to establish that appellant was totally or partially disabled from January 25 to March 24, 2006 due to a worsening of her accepted work-related condition, left rotator cuff tendinitis impingement or a change in her job duties such that she was unable to perform her light-duty work for eight hours a day. Therefore, Dr. Martin's reports do not establish that appellant had a work-related recurrence of total or partial disability.

In a January 17, 2006 report, Dr. Mitchell provided a history of appellant's condition and findings on physical examination. He diagnosed left rotator cuff tendinitis impingement and status post left shoulder arthroscopy with decompression. Dr. Mitchell stated that appellant had diminished left shoulder range of motion and strength due to her left shoulder condition but was capable of performing limited-duty work for eight hours a day. As he opined that appellant could perform light-duty work, his report does not support appellant's claim for a recurrence of total or partial disability from January 25 to March 24, 2006.

In a May 2, 2006 report, Dr. Fontaine diagnosed chronic cervicalgia, cervical spondylosis and status post left shoulder subacromial decompression. However, he opined that appellant could perform light-duty work. Moreover, the Office has not accepted these cervical conditions as work related. Dr. Fontaine did not opine that appellant was totally or partially disabled from January 25 to March 24, 2006 due to a worsening of her accepted work-related condition, left rotator cuff tendinitis impingement or a change in her job duties such that she was unable to perform her light-duty work. Therefore, his report does not establish that appellant had a work-related recurrence of total or partial disability.

Appellant failed to establish that she was totally or partially disabled between January 25 and March 24, 2006 due to a worsening of her accepted left shoulder condition, left rotator cuff tendinitis and impingement or a change in her job duties such that she was unable to perform her light-duty work. Therefore, she failed to meet her burden of proof and the Office properly denied her claim for a recurrence of disability.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of total or partial disability for the period January 25 to March 24, 2006 causally related to her February 27, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 6, 2006 is affirmed.

Issued: October 18, 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