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Case Submitted on the Record

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1 myositis of the neck, back and arms as a result of her employment duties. Her claim was
2 eventually accepted on April 14, 2004 for temporary aggravation of cervical myositis.¹

3 The record reflects that appellant returned to limited duty on October 10, 2003. In
4 a September 27, 2004 disability certificate, Dr. William Penn, a Board-certified
5 osteopath, specializing in family practice, recommended that appellant be provided with a
6 chair for back support and that she be restricted from lifting more than five pounds.
7 Appellant was also prohibited from prolonged bending, lifting or stooping.

8 On July 6, 2005 appellant filed a recurrence of disability claim as of June 23,
9 2005, when she stopped working. She alleged that she had all of the same symptoms
10 associated with her 2003 claim, "but now more severe." Appellant described pain in the
11 left side of her neck and shoulder, the entire left arm all the way down to the fingertips,
12 and midway down her back on the left side. She stated her belief that "the injury [was
13 due] to lack of treatment from the initial claim being denied and [so] much time
14 elaps[ing] before being accepted and then denied again after several months." Appellant
15 stated that, at the time of the alleged recurrence, she was working a bid job, which
16 required her to hand-case mail.

17 In support of her claim, appellant submitted medical reports from St. Mary Mercy
18 Hospital, including an Emergency Department Preliminary Report, dated June 30, 2005,
19 from Dr. Andrew Muzychka, Board-certified in the area of emergency medicine, who
20 noted appellant's complaints of pain in her left neck radiating down her left arm, which
21 she had been experiencing for about three weeks. Dr. Muzychka provided diagnoses of
22 cervical radiculopathy and disc herniation. The record also contains June 30, 2005
23 reports of a chest x-ray and magnetic resonance imaging (MRI) scan of the cervical
24 spine. In a July 2, 2005 report, Dr. Patel Trupti, a treating physician, stated that
25 appellant's chief complaint was severe pain in the neck radiating to the left upper
26 extremity. Her recent myelogram and computerized tomography (CT) scan showed
27 bilateral neural foraminal encroachment, which was worse on the left side. Appellant
28 also submitted a July 15, 2005 order for physical therapy from Dr. Peter Bono, a treating
29 physician and July 12, 2005 laboratory test results.

30 On July 27, 2005 the Office informed appellant that the information and evidence
31 submitted was insufficient to establish her claim. The Office advised appellant to submit,
32 within 30 days, a physician's report containing a rationalized opinion explaining how her
33 work-related condition materially worsened without an intervening injury, to the point
34 that she was unable to perform the duties of her limited-duty job.

35 On July 28, 2005 appellant submitted a claim for compensation for the period
36 June 23 through July 22, 2005. On August 23, 2005 she submitted a claim for

¹ The Office initially denied appellant's claim by decision dated May 21, 2003. On March 2, 2004 an Office hearing representative remanded the case for a second opinion examination and an opinion on causal relationship. Based on the April 7, 2004 report of Dr. Mitchell Z. Pollak, a Board-certified orthopedic surgeon, the Office accepted appellant's claim for aggravation of cervical myositis. On May 3, 2004 the Office clarified that appellant's condition was considered to be temporary in nature.

1 compensation for the period June 23 through August 22, 2005. Appellant also submitted
2 a time analysis sheet for the same periods. By letters dated August 10 and September 13,
3 2005, the Office informed appellant that it could not rule on her claims for compensation
4 until a decision had been made on her recurrence claim.²

5 Appellant submitted a copy of an offer of modified assignment for “mail
6 processing clerk,” which she accepted on October 7, 2004. The duties included casing
7 mail. The “physical requirements” of the position included manually sorting letter mail
8 by placing letters in the appropriate pigeon hole on the manual letter case. Appellant was
9 to be provided with a chair for back support and was restricted from lifting in excess of
10 five pounds and from any prolonged bending, stooping or lifting.

11 In a letter dated August 13, 2005, appellant contended that her condition
12 worsened when she returned to light duty in June 2003. She stated that at the end of
13 2003, when she began working regular duty as a mail processor, she began “to feel the
14 resumed acceleration of pain.” Appellant was placed back on light duty as of April 2004.
15 She indicated that her bid job involved hand-casing mail.

16 Appellant submitted an August 9, 2005 report from Dr. Timothy A. Wright, a
17 Board-certified anesthesiologist, who related the history of injury, as reported by
18 appellant. She stated that she returned to work with restrictions four months after her
19 June 2003 injury. Appellant indicated that “things were going okay until June 23, 2005,
20 when the pain came back full force all at once while at work.” She complained of
21 constant left neck and arm pain, radiating down the arm through the forearm into the
22 hand. Appellant also complained of numbness, tingling and weakness in the left arm. A
23 June 30, 2005 CT scan of the cervical spine was significant for degenerative disc disease
24 and degenerative spurring in the cervical spine, most notably at C5-6, where there was a
25 right paramedian disc herniation and bone spurring. A July 1, 2005 myelogram and
26 postmyelogram CT scan of the cervical spine showed similar findings, with degenerative
27 changes in the cervical spine, with bilateral neural foraminal encroachment. Physical
28 examination of the neck showed full range of motion and no cervical lymphadenopathy.
29 There was provocative tenderness over the left cervical facet joints in the left cervical
30 paraspinous region. Dr. Wright found provocative tenderness over the left thoracic
31 paraspinous region, as well as over the left rhomboid musculature and left trapezius
32 musculature. He also found slightly decreased grip strength in the left hand. Dr. Wright
33 provided diagnoses of: neck and left arm pain; left cervical radiculopathy; degenerative
34 disc disease in the cervical spine, with disc intrusion most prominent at C5-6 with
35 encroachment of neural foramina bilaterally; and cervical spondylosis and facet
36 arthropathy with osteophytes noted especially at C5-6. In a September 28, 2005 report,
37 he reiterated his diagnoses.

² The Board notes that the record does not contain a final decision regarding appellant’s claims for compensation for this period. Therefore, the Board does not have jurisdiction over the merits of the claim. *See* 20 C.F.R. § 501.2(c) (the Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case).

1 Appellant submitted an August 11, 2005 attending physician's report from
2 Dr. Edwin C. Blumberg, a treating physician, who provided diagnoses of pinched nerves,
3 bulging discs, bone spurs and cervical degeneration. Dr. Blumberg stated that appellant
4 was hospitalized from June 30 through July 5, 2005 and opined that she was disabled
5 from June 23 through August 3, 2005. In response to the form question as to whether he
6 believed appellant's condition was caused or aggravated by employment, Dr. Blumberg
7 placed a check mark in the "yes" box and added the notation: "according to patient."

8 By decision dated February 1, 2006, the Office denied appellant's claim for
9 recurrence of disability on the grounds that the medical evidence was insufficient to
10 establish that her claimed recurrence was causally related to her accepted injury.

11 On January 29, 2006 appellant requested a schedule award. On February 4, 2006
12 appellant, through her counsel, requested an oral hearing.

13 In a January 10, 2006 attending physician's report, Dr. Penn provided a diagnosis
14 of "C/D myofasitis and indicated that appellant was disabled from June 23 through
15 September 1, 2005. In response to the form question as to whether appellant's condition
16 was caused or aggravated by employment, Dr. Penn placed a check mark in the "yes"
17 box. In an accompanying work capacity evaluation, Dr. Penn stated that appellant was
18 able to work eight hours per day with restrictions. He indicated that she would need a
19 chair with support; that she could not lift more than five pounds or stand longer than four
20 hours; and that she could not reach, twist, bend, stoop, push, pull, squat, kneel or climb.

21 The Office referred appellant, together with a statement of accepted facts and the
22 entire medical record, to Dr. Michael J. Geoghegan, a Board-certified orthopedic
23 surgeon, for an opinion as to the extent of appellant's permanent disability. In a
24 March 30, 2006 report, Dr. Geoghegan related appellant's complaints of chronic neck
25 pain radiating to her left shoulder and arm, which began in 2003 and was aggravated by
26 lifting trays of mail. His physical examination of appellant revealed pain with flexion
27 and extension of the cervical spine, pain with lateral rotation to the right and pain with
28 lateral bending to the right and left. Deep tendon reflexes were hypoactive in both upper
29 extremities. There was no weakness in either upper extremity. Appellant complained of
30 slightly decreased sensation to light touch involving the tips of the small and ring finger
31 on the left hand. Tinel's sign and Phalen's test were negative in both upper extremities.
32 June 27, 2005 x-rays of the dorsal spine revealed degenerative changes, but there was no
33 evidence of any ruptured intervertebral disc. The myelogram of the dorsal spine showed
34 no evidence of any ruptured disc or spinal stenosis. A cervical myelogram showed
35 degeneration at C6-7 and C5-6. A routine x-ray of the cervical spine showed evidence of
36 degenerative disc disease at C5-6 with slight narrowing of the left neural foramen at that
37 level. A June 3, 2005 MRI scan of the cervical spine showed evidence of a small
38 ruptured intervertebral disc at C5-6 level and protrusion causing some slight canal
39 stenosis at C5-6 on the left side. A June 30, 2005 CT scan of the cervical spine showed
40 evidence of some degenerative disc disease and degenerative spurring. Dr. Geoghegan
41 opined that appellant had "evidence of difficulty relative to her cervical spine." He stated
42 that she had continued cervical myositis with nerve root irritation involving the left upper
43 extremity, as well as evidence of radiculopathy. Dr. Geoghegan recommended that she

1 continue to work with restrictions, including lifting no more than five pounds. In his
2 work capacity evaluation, he indicated that appellant could work eight hours per day with
3 restrictions, including lifting no more than five pounds or standing for no longer than four
4 hours. Appellant should also be restricted from reaching, twisting, bending, stooping,
5 pushing, pulling, squatting, kneeling or climbing. Dr. Geoghegan also recommended that
6 she be provided a chair with back support. He opined that appellant had not reached
7 maximum medical improvement. In a May 12, 2006 addendum to his March 30, 2006
8 report, Dr. Geoghegan stated that the only objective finding on his physical examination
9 of appellant's extremities was diminished sensation to light touch involving sensory ulnar
10 nerve distribution involvement in the right hand. He opined that appellant had a two
11 percent upper extremity impairment, pursuant to Table 16-15 at page 492 of the
12 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th
13 ed. 2001).

14 An oral hearing was conducted on August 15, 2006. Appellant testified that she
15 applied for and was awarded a bid job in approximately March 2004, which required her
16 to sit in a chair and hand-case mail and to occasionally reach overhead. She further
17 expressed her belief that the duties of her job caused the recurrence of her pain.

18 By decision dated October 13, 2006, the hearing representative affirmed the
19 denial of appellant's claim, finding that the medical evidence did not establish that she
20 sustained a recurrence of disability causally related to her employment. The
21 representative found that there was no reasoned medical opinion describing a relationship
22 between appellant's current condition and the accepted work injury.

23 **LEGAL PRECEDENT**

24
25 Section 10.5(x) of the Office's regulations defines "recurrence of disability" as an
26 inability to work after an employee has returned to work, caused by a spontaneous
27 change in a medical condition which had resulted from a previous injury or illness,
28 without an intervening injury or new exposure to the work environment that caused the
29 illness.³

30 Appellant has the burden of establishing that she sustained a recurrence of a
31 medical condition⁴ that is causally related to her accepted employment injury. To meet
32 her burden, she must furnish medical evidence from a physician who, on the basis of a
33 complete and accurate factual and medical history, concludes that the condition is
34 causally related to the employment injury and supports that conclusion with sound

³ 20 C.F.R. § 10.5(x) (2002). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

⁴ "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

1 medical rationale.⁵ Were no such rationale is present, the medical evidence is of
2 diminished probative value.⁶

3 When an employee, who is disabled from the job she held when injured on
4 account of employment-related residuals, returns to a light-duty position or the medical
5 evidence establishes that she can perform the light-duty position, the employee has the
6 burden to establish, by the weight of the reliable, probative and substantial evidence, a
7 recurrence of total disability, and show that she cannot perform such light duty. As part
8 of this burden, the employee must show a change in the nature and extent of the injury-
9 related condition or a change in the nature and extent of the light-duty job requirements.⁷

10 ANALYSIS

11
12 Appellant has not met her burden of proving that she sustained a recurrence of
13 disability beginning June 23, 2005. She alleges a worsening of her injury-related
14 condition and contends that the requirements of her limited-duty position changed such
15 that she no longer was physically able to perform the requirements of her light-duty job.
16 However, she has failed to submit any evidence of such a change in her requirements.
17 Moreover, she has failed to produce any rationalized medical opinion evidence
18 explaining how her present condition is causally related to the accepted employment
19 injury.

20 The Office accepted appellant's claim for temporary aggravation of cervical
21 myositis. Appellant returned to a light-duty position October 10, 2003 and filed a claim
22 for a recurrence of disability on July 6, 2005, alleging that she was unable to work as of
23 June 23, 2005. The Office advised appellant of the evidence needed to establish her
24 claim. However, appellant did not submit any medical reports from a physician who, on
25 the basis of a complete and accurate factual and medical history, concluded that she
26 sustained total disability as of June 23, 2005 due to residuals of her accepted injury. On
27 June 30, 2005 Dr. Muzychka provided diagnoses of cervical radiculopathy and disc
28 herniation. As his report does not contain an opinion as to whether appellant was
29 disabled during the period in question or address the cause of appellant's condition, it is
30 of limited probative value. On July 2, 2005 Dr. Trupti noted appellant's complaint of
31 severe pain in the neck radiating to the left upper extremity. On July 15, 2005 Dr. Peter
32 Bono prescribed physical therapy for appellant's cervical condition. In that neither report
33 contains a diagnosis or addresses the relevant issue of total disability for work, they lack
34 probative value. In his August 9, 2005 report, Dr. Wright provided: diagnoses of neck
35 and left arm pain; left cervical radiculopathy; degenerative disc disease in the cervical
36 spine, with disc intrusion most prominent at C5-6 with encroachment of neural foramina
37 bilaterally; and cervical spondylosis and facet arthropathy with osteophytes noted
38 especially at C5-6. However, he provided no opinion as to the cause or whether she was

⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁶ *Albert C. Brown*, 52 ECAB 152 (2000).

⁷ *Conard Hightower*, 54 ECAB 796 (2003).

1 disabled as a result, of her diagnosed conditions. Medical evidence which does not offer
2 any opinion regarding the cause of an employee's condition is of limited probative
3 value.⁸ Moreover, as Dr. Wright did not address appellant's disability, his report is
4 irrelevant to the issue at hand. Dr. Geoghegan found evidence of degenerative disc
5 disease, continued cervical myositis with nerve root irritation involving the left upper
6 extremity and radiculopathy. However, he provided no opinion as to whether appellant
7 was disabled during the period in question. Therefore, his report also lacks probative
8 value. The Board will not require the Office to pay compensation for disability in the
9 absence of medical evidence directly addressing the specific dates of disability for which
10 compensation is claimed. To do so would essentially allow an employee to self-certify
11 her disability and entitlement to compensation.⁹

12 The only medical evidence of record containing an opinion as to appellant's
13 disability during the alleged period consists of the reports from Drs. Blumberg and Penn.
14 In his August 11, 2005 attending physician's report, Dr. Blumberg provided: diagnoses
15 of pinched nerves; bulging discs; bone spurs; and cervical degeneration. He stated that
16 appellant was hospitalized from June 30 through July 5, 2005 and opined that she was
17 disabled from June 23 through August 3, 2005. In response to the form question as to
18 whether he believed appellant's condition was caused or aggravated by employment,
19 Dr. Blumberg placed a check mark in the "yes" box and added the notation: "according
20 to patient." In a January 10, 2006 attending physician's report, Dr. Penn provided a
21 diagnosis of "C/D myofasitis and indicated that appellant was disabled from June 23,
22 2005 through September 1, 2006. In response to the form question as to whether her
23 condition was caused or aggravated by employment, Dr. Penn also placed a check mark
24 in the "yes" box. The Board has held that, when a physician's opinion on causal
25 relationship consists only of checking "yes" to a form question, without explanation or
26 rationale, that opinion is of diminished probative value and is insufficient to establish a
27 claim.¹⁰ Dr. Blumberg's opinion is further compromised by its equivocal nature. As
28 neither physician provided any medical rationale explaining how appellant's claimed
29 disabling condition was related to her accepted temporary aggravation of cervical
30 myositis condition, neither report is sufficient to establish that appellant sustained a
31 recurrence of disability during the period in question.¹¹

32 At the oral hearing, appellant testified that she applied for and was awarded, a bid
33 job in approximately March 2004, which required her to sit in a chair and hand-case mail
34 and to occasionally reach overhead. She further expressed her belief that the duties of her
35 job, which exceeded her medical restrictions, caused the recurrence of her pain.

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *Amelia S. Jefferson*, 57 ECAB __ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001). The Board notes that appellant was referred to Dr. Geoghegan for the purpose of obtaining an opinion as to the extent of her permanent impairment for schedule award purposes.

¹⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹¹ See *Albert C. Brown*, *supra* note 6; see also *Terry R. Hedman*, 38 ECAB 222 (1986).

1 However, appellant's belief alone, that her current condition was causally related to her
2 accepted injury, is insufficient to warrant an award of compensation. The Board notes
3 that the physical requirements of the modified mail processing clerk position, accepted by
4 appellant on October 7, 2004, were within the restrictions provided by Dr. Penn on
5 September 27, 2004. Appellant has provided no evidence that the Office required her to
6 work outside of those restrictions or that her condition worsened to the degree that she
7 was unable to perform the duties of the position.

8 Appellant has failed to establish by the weight of the reliable, probative and
9 substantial evidence, a change in the nature and extent of the injury-related condition
10 resulting in her inability to perform the duties of her modified employment. She has
11 provided absolutely no rationalized opinion evidence establishing either that she was
12 disabled as of June 23, 2005 or that her current condition is related to her original
13 employment-related injury. As appellant has not submitted any medical evidence
14 showing that she sustained a recurrence of disability due to her accepted employment
15 injury, the Board finds that she has not met her burden of proof.

16 **CONCLUSION**

17
18 The Board finds that appellant did not meet her burden of proof in establishing
19 that on June 23, 2005 she sustained a recurrence of disability that was causally related to
20 her accepted injury.

ORDER

IT IS HEREBY ORDERED THAT the October 13 and February 1, 2006
decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 21, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals

Board

David S. Gerson, Judge
Employees' Compensation Appeals

Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals

Board