



By letter dated July 13, 2001, the Office advised appellant that it had adjusted his compensation to reflect his modified part-time letter carrier duties that were effective October 2, 2000. It accepted four recurrences of disability, and in May 2006, appellant began working a three-hour day.<sup>1</sup>

On March 1, 2007 the Office referred appellant to Dr. P. Leo Varriale, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a March 15, 2007 report, Dr. Varriale reviewed the medical record, the statement of accepted facts, and appellant's complaints of pain in the neck and shoulder due to repetitive delivery and carrying mail. He reported that for the past several months appellant had been working three hours a day monitoring gates and answering telephones. Dr. Varriale noted that appellant exhibited exaggerated pain behavior on physical examination with decreased range of motion of the cervical spine and shoulder abduction, no spasm or sensory deficit, and full strength of the biceps, triceps and intrinsic muscles of the hand and internal and external rotators of the shoulder and no swelling or tenderness about the shoulder. He diagnosed cervical spondylosis as confirmed on computerized tomography, advising that this condition was permanently aggravated by appellant's prior job duties. Dr. Varriale stated that appellant was unable to perform mail carrier duties but could work six hours a day with permanent restrictions of no reaching, reaching above the shoulder, twisting or climbing, two hours of walking and standing, and one hour of bending and stooping, pushing, pulling, lifting, squatting and kneeling with a 10-pound weight restriction. Based on Dr. Varriale's opinion, on July 18, 2007, appellant was offered and accepted a modified position to begin at six hours a day.<sup>2</sup> However, he did not work this assignment and continued to work three hours a day.

On October 2, 2007 appellant filed a Form CA-2a, recurrence of disability claim, alleging that he sustained a recurrence of disability on August 3, 2007, stating that he could not work because his accepted injury worsened. He submitted form reports from Dr. Tsai C. Chao, a Board-certified physiatrist, dated August 31 and September 4, 2007. Dr. Chao diagnosed multiple herniated discs of the cervical spine with radiculopathy, right shoulder impingement and left cubital tunnel syndrome and advised that appellant was totally disabled beginning on August 3, 2007. On September 26, 2007 he advised that appellant could return to limited duties for three hours daily with restrictions of three hours sitting, standing, walking, pushing and pulling, no climbing, kneeling or reaching above the shoulder and one hour of bending, stooping and twisting with a continuous weight restriction of 0 to 5 pounds and intermittent restriction of 5 to 10 pounds. In letters dated November 5 and 16, 2007, the Office informed appellant of the evidence needed to support his recurrence claim. Dr. Chao submitted reports reiterating the diagnoses and advising that appellant could only work three hours of modified duty daily with restrictions to his physical activity.

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<sup>1</sup> An April 12, 2007 job offer listed job duties of answering the telephone, assisting customers in the lobby, advising customers about the automated postal center, updating redbooks and assisting carrier's paperwork. Lifting and carrying were restricted to 10 pounds, sitting, standing, walking, pushing, pulling, bending, stooping, and twisting to three hours daily with no climbing, kneeling or reaching above the shoulder.

<sup>2</sup> The job duties were consistent with the April 12, 2007 job offer, *id.*, but were for six hours a day.

By decision dated January 3, 2008, the Office denied appellant's claim that he sustained a recurrence of disability on August 3, 2007. It found that the medical evidence was insufficient to establish that the accepted condition had worsened such that he was totally disabled from his light-duty position.

On February 1, 2008 appellant requested a hearing. He submitted a January 18, 2008 report in which Dr. Chao reported that he first saw appellant on October 22, 2000. Dr. Chao reviewed appellant's physical findings and treatment regimen and advised that on August 3, 2007 appellant reported a worsening of neck and right shoulder pain. Cervical spine examination demonstrated intensified pain at the end of range of motion in all directions with significant muscle spasm and tenderness. Tenderness was also found on examination of the right shoulder. Dr. Chao noted that he issued a temporary total disability certificate at that time and recommended physical and occupational therapy. He stated that on September 26, 2007 the intensity of the muscle spasms and tenderness was much improved and appellant was advised to resume limited duty for three hours a day. Dr. Chao noted that appellant's complaints and physical findings on October 24 and November 21, 2007 and January 9, 2008 were similar to those found on September 26, 2007. He also noted that appellant was in a motor vehicle accident in October 2006 that caused a period of temporary total disability. Dr. Chao also provided a number of form reports reiterating his findings and conclusions.

At the hearing, held telephonically on May 1, 2008, appellant testified that he stopped work on August 3, 2007 because his neck was hurting and he needed to rest. He stated that he had motor vehicle accidents in October 2000 and January 2008 that were not employment related and that his neck hurt daily. Appellant testified that employing establishment management gave him a hard time and that he had not filed other workers' compensation claims. He thought he returned to work for three hours a day in October 2007. By letter dated May 27, 2008, the employing establishment advised that it had provided a job offer in compliance with Dr. Varriale's restrictions.

In a July 25, 2008 decision, an Office hearing representative affirmed the January 3, 2008 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>3</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>4</sup> *Id.*

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.<sup>5</sup>

### ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on August 3, 2007 due to his accepted cervical spondylosis. Appellant did not establish that the nature and extent of his injury-related condition changed on August 3, 2007 so as to prevent him from continuing to perform his limited-duty assignment. The Board has held that a partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty, if a recurrence of total disability is claimed.<sup>6</sup> The issue of whether an employee has disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence.<sup>7</sup> A claimant's burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup>

On August 3, 2007 the day appellant stopped work, Dr. Chao reported that appellant stopped work due to pain and advised that he was temporarily totally disabled. He submitted numerous reports advising that appellant remained totally disabled. However, Dr. Chao did not demonstrate any knowledge of the job requirements of the essentially sedentary duties of appellant's limited-duty position or provide a rationalized explanation as to why he could not perform the light-duty work.<sup>9</sup> Furthermore, he did not address appellant's motor vehicle accidents or explain how they contributed to his condition.

The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.<sup>10</sup> It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure would result in a diagnosed condition is

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<sup>5</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> *See William M. Bailey*, 51 ECAB 197 (1999).

<sup>7</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>8</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>9</sup> *Supra* note 1.

<sup>10</sup> *See Albert C. Brown*, 52 ECAB 152 (2000).

not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.<sup>11</sup> The record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed recurrence of disability was caused by the accepted cervical spondylosis.<sup>12</sup>

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability on August 3, 2007 causally related to his accepted cervical spondylosis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' hearing representative dated July 25, 2008 be affirmed.

Issued: June 10, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>12</sup> *Cecelia M. Corley*, *supra* note 7.