

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

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**K.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
North Bend, WA, Employer**

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**Docket No. 09-1666  
Issued: August 25, 2010**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 15, 2009 appellant filed a timely appeal from August 14 and December 16, 2008 merit decisions denying her claim for compensation benefits.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant was disabled commencing February 15, 2008 causally related to her March 29, 2005 injury.

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<sup>1</sup> Appellant's appeal was postmarked on June 15, 2009, the 181<sup>st</sup> day after the December 16, 2008 decision. As the 180<sup>th</sup> day, however, fell on a Sunday, the Board has jurisdiction over the December 16, 2008 decision. *See Debra McDavid*, 57 ECAB 149 (2005); *Betsy Limpo*, Docket No. 00-1285 (issued April 17, 2001). For decisions of the Office issued prior to November 19, 2008, a claimant had up to one year to file an appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> The record contains an August 13, 2008 merit decision terminating appellant's authorization for medical benefits effective August 7, 2008. Appellant did not seek review of this decision and it is not before the Board. 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On April 14, 2005 appellant, then a 45-year-old carrier, filed a claim alleging that on March 29, 2005 she sustained an injury to her right elbow. The Office accepted her claim for right lateral epicondylitis. Appellant worked modified duty beginning April 14, 2005.

In an August 9, 2006 duty status report, Dr. Abid Haq, Board-certified in occupational medicine, diagnosed ulnar neuropathy on the right. He advised that appellant could resume her regular full-time employment and required no further medical appointments. On August 21, 2006 Dr. Haq diagnosed epicondylitis and found that appellant could work with restrictions. On August 25, 2007 he diagnosed right carpal tunnel syndrome and right epicondylitis of the elbow. Dr. Haq found that she could work within her permanent restrictions.<sup>3</sup>

In a February 22, 2008 memorandum of telephone call, a health provider advised the Office that appellant sustained renal failure as a reaction to a Toradol injection, which she received for her work-related condition. The Office informed the health provider that it had not authorized the injection and that appellant should provide medical evidence regarding the Toradol injection and her renal failure.

In a February 13, 2008 report, Dr. Haq related that he treated appellant that day for complaints of worsening of her right arm pain and increased numbness of the right fourth and fifth digits. Appellant was taking her dog outside, holding the leash, when the dog jumped forwards, wrenching her right arm and causing her to fall to the ground onto her right shoulder and right elbow. Dr. Haq noted that the incident with the dog occurred on February 8, 2008. Appellant complained of severe pain in the right lateral elbow and forearm and numbness and tingling of the digits of her right hand. Following that incident, her symptoms were “exacerbated by computer use, driving, grasping, hand motion, pulling, pushing and reaching....” Dr. Haq diagnosed right ulnar neuropathy, lateral epicondylitis of the right elbow and right carpal tunnel syndrome. He opined that appellant experienced a temporary aggravation of her right arm condition and gave her an injection of 60 milligrams of Toradol. Dr. Haq advised that she could continue work with restrictions.

The record reflects that appellant was admitted to the hospital on February 19, 2008 with acute renal failure. She provided a history of receiving a shot of Toradol on February 13, 2008 for pain due to her chronic right ulnar neuropathy and lateral epicondylitis. Dr. Kumiko Y. Nomoto, Board-certified in family practice, evaluated appellant and diagnosed acute renal failure most likely a manifestation of an acute interstitial nephritis resulting from the shot of ketorolac (Toradol) that she received six days ago. In a February 20, 2008 discharge summary, Dr. Nomoto listed acute renal failure and interstitial nephritis “presumed secondary to Toradol.”

On March 27, 2008 appellant filed claims for wage-loss compensation commencing February 15, 2008.

On April 4, 2008 the Office advised appellant that Dr. Haq treated her with a Toradol injection on February 13, 2008 after she sustained increased arm symptoms on February 8, 2008

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<sup>3</sup> By decision dated January 24, 2008, the Office denied appellant’s claim for a schedule award. It determined that the opinion of Dr. Richard Hall, a Board-certified orthopedic surgeon and Office referral physician, established that she had no permanent impairment due to her accepted work injury.

when her dog jumped forward and wrenched her right arm. He diagnosed a temporary aggravation of her right arm condition. It requested that appellant submit a rationalized medical report addressing her condition following the incident with her pet and the need for the Toradol injection, whether the injection was for her accepted right lateral epicondylitis and how her hospitalization and disability was due to the Toradol injection.

In a note dated March 14, 2008, Dr. Ruth Emerson, Board-certified in family practice, found that appellant was disabled from work beginning February 15, 2008, but she could return to regular duty or reevaluation on March 24, 2008. On March 27, 2008 Dr. Nomoto noted that appellant was disabled from March 25 to April 7, 2008.

On April 22, 2008 Dr. Haq found that appellant was at maximum medical improvement for her right upper extremity elbow lateral epicondylitis, carpal tunnel syndrome and ulnar neuropathy. He stated:

“[Appellant] had been treated for aggravation of her right arm condition on February 13, 2008. She states that she recalled falling to the ground onto her right shoulder and right elbow on the evening of February 8, 2008 when her dog wrenched her right arm. [Appellant] states that subsequent to that event the right arm condition worsened due to computer use, driving, grasping, hand motion, pulling, pushing and reaching, lifting and moving seats at work.”

Dr. Haq treated appellant with Toradol and noted that she subsequently developed nephritis which “may have been due to the medication.”

On April 25, 2008 Dr. Haq attributed the worsening of appellant’s right elbow condition to both the February 8, 2008 incident while walking her dog and to her work duties performed after the fall. He asserted that the diagnoses of acute renal failure and acute interstitial nephritis was “presumed to be secondary to ketorolac (Toradol) to treat the severe exacerbation of [appellant’s] right lateral epicondylitis, on a more probable-than-not basis, even though she had been given the same injection in the past with no adverse effects. This was the opinion of her attending [physicians] in the hospital.” Dr. Haq noted that Dr. Nomoto found appellant disabled for work when she was discharged from the hospital on February 20, 2008.

In a June 3, 2008 decision, the Office denied appellant’s claim for wage-loss compensation from February 15 through April 11, 2008. It found that Dr. Haq’s April 25, 2008 report was not sufficient to establish that the Toradol injection was for treatment of her accepted work injury.

On July 21, 2008 appellant requested reconsideration of the June 3, 2008 decision. On July 26, 2008 Porter W. DeVere, the postmaster, related that for one week prior to and including February 13, 2008 appellant moved “jump seats” from one long life vehicle to another.

In a July 29, 2008 letter, Dr. Haq stated:

“It is my medical opinion that [appellant’s] right elbow condition was temporarily aggravated by the repetitive computer use, activities of driving, grasping, hand motion, pulling, pushing and reaching, lifting and moving seats at work, using her dominant right hand and arm.

“It is true that the right elbow epicondylitis resolved and [appellant] was at MMI [maximum medical improvement] on August 9, 2006. It is also true that she sustained an injury to the right elbow when walking her dog on February 8, 2008, which was nonindustrial. [Appellant] had been pain-free and working since August 9, 2006.

“However, it is my medical opinion that the repetitive work activities caused a flare-up of the right elbow condition. I believe that had [appellant] not been doing her work activities, her right elbow condition would not have worsen[ed] to the point to where she needed strong medication since the Naproxen she was taking was not helping. Because she was in such severe pain, I offered her an injection of intramuscular ketorolac (Toradol) to relieve her right arm pain, so that she could resume work. [Appellant] was offered this strong anti-inflammatory because she had responded well to it in the past, and there was no history of any adverse reaction to NSAIDS [nonsteroidal anti-inflammatory drugs] in the past.

“Unfortunately, [appellant] developed a reaction to the Toradol injection manifested as acute interstitial nephritis and acute renal failure. While it is true that she had no prior history of allergic reaction to this medication, (the first time she was given it was May 30, 2007, and the second time was on February 13, 2008) she probably became sensitized to it on the first administration, and developed an acute reaction on her second exposure.

“I do wish to stress that [appellant] was given the medication to treat her right arm pain which was temporarily aggravated by the repetitive work activity. The subsequent reaction should also be indirectly regarded as work related, since she was given it to treat the right elbow pain.”

By decision dated August 13, 2008, the Office terminated appellant’s compensation and medical benefits effective August 7, 2008.<sup>4</sup> It found that an impartial specialist’s report constituted the weight of the evidence and established that her accepted condition had resolved.

In a decision dated August 14, 2008, the Office rescinded and reissued its June 3, 2008 decision denying appellant’s claim for wage-loss compensation from February 15 through March 28, 2008.

On September 11, 2008 appellant requested a review of the written record on the August 14, 2008 decision. In a letter dated November 22, 2008, she related that she experienced increased arm pain in February 2008 “after moving jump seats for at least a week. This was [not] a new injury it is a continuation of the same.”

In a December 16, 2008 decision, an Office hearing representative affirmed the August 14, 2008 denial of wage-loss compensation. He found that appellant received medical treatment on February 13, 2008 following an intervening, nonindustrial injury on February 8, 2008. Therefore, the adverse effect from such treatment was not compensable.

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<sup>4</sup> The Office initially issued the decision on August 8, 2008; however, on August 13, 2008 it issued a corrected copy of the decision.

Dr. Haq attributed the temporary aggravation of her right arm condition to repetitive work duties, which would constitute a new occupational disease.

On appeal, appellant contends that she experienced frequent right arm pain after her injury in 2005. She moved jump seats and performed her regular work duties and her prescriptions were not working; therefore, she sought treatment on February 13, 2008. Appellant asserted that walking her dog was not the only cause of her condition.

### **LEGAL PRECEDENT**

The term disability as used in the Federal Employees' Compensation Act<sup>5</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by probative medical evidence.<sup>7</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>8</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.<sup>9</sup>

It is well established that when an employee returns to light-duty work, she has the burden to establish a recurrence of disability and that she cannot perform such light duty. The employee must show a change in the nature of the accepted condition or a change in the light-duty job requirements.<sup>10</sup>

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment unless it is the result of an independent intervening cause.<sup>11</sup>

### **ANALYSIS**

The Office accepted that appellant sustained right lateral epicondylitis due to a March 29, 2005 work injury.<sup>12</sup> Appellant worked limited duty full time beginning April 14, 2005. As of

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<sup>5</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

<sup>6</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>11</sup> *See S.M.*, 58 ECAB 166 (2006); *Carlos A. Marrero*, 50 ECAB 117 (1998).

<sup>12</sup> The record reflects that appellant is right-hand dominant.

August 9, 2006, her attending physician advised that she could continue work under her physical restrictions but she required no further medical appointments. In a closing report, Dr. Haq noted that appellant's magnetic resonance imaging scan showed a normal right elbow and nerve conduction studies were consistent with a moderate right median nerve entrapment at the wrist. He diagnosed lateral epicondylitis of the right elbow, resolved and right carpal tunnel syndrome of the right that was asymptomatic. Dr. Haq advised that appellant's right ulnar neuropathy was symptomatic only when positional.<sup>13</sup>

When seen by Dr. Haq on February 13, 2008, he noted that appellant had last worked that day and that she was at maximum medical improvement for the accepted conditions. Appellant presented to his office with a worsening of right arm pain with numbness of the right fourth and fifth digits. Dr. Haq obtained a history that, while walking her dog holding a leash, the dog suddenly jumped forward "wrenching her right arm and causing her to fall to the ground onto her right shoulder and right elbow. This occurred on the evening of February 8, 2008." He provided her with the Toradol injection and advised that she continue to work with restrictions.

Appellant was subsequently hospitalized on February 19, 2008 with acute renal failure. She claims disability from February 15 to March 15, 2008 causally related to her March 29, 2005 employment injury. The Board finds that appellant's need for medical treatment on February 13, 2008 was due to an independent intervening cause when she fell on the evening of February 8, 2008 after her dog jumped on a leash.

The evidence of record does not establish that appellant's need for medical treatment on February 13, 2008 was due to a natural progression or worsening of the accepted right elbow epicondylitis condition. There is no medical evidence documenting treatment by Dr. Haq for this condition from the late summer of 2006. On February 13, 2008 the triggering activity identified by the attending physician was appellant's dog jumping forward while on a leash, causing her to fall to the ground on her right shoulder and elbow. It was only after the occurrence of this incident on February 8, 2008 that appellant sought medical treatment. In *Anthony S. Wax*,<sup>14</sup> the employee had an accepted low back condition related to lifting heavy mail. On January 13, 1951, after completing his work, he drove to an apartment building he owned to examine the fuel supply. He moved ash barrels weighing between 100 to 150 pounds and sustained severe pain in his low back. The Board found that the employee failed to establish a chain of causation for his disability back to his accepted injury. It found that his disability following January 13, 1951 was not a direct and natural result of his accepted low back condition but was due to an independent intervening cause. In *Howard S. Wiley*,<sup>15</sup> the employee slipped on steps leading from his house while on his way to work. The Board noted that he had an accepted claim for a back condition sustained when lifting a five-gallon can of paint. It found that appellant's injury on the steps of his house was independent of the earlier work injury. In *John R. Knox*,<sup>16</sup> the employee had an accepted left knee injury sustained when he struck a ridge while climbing from an enclosed

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<sup>13</sup> On September 13, 2006 Dr. Haq provided work restrictions continuing appellant's modified duties. He saw her again on October 11, 2006 after she cased mail for five hours the prior day.

<sup>14</sup> 7 ECAB 330 (1954).

<sup>15</sup> 7 ECAB 126 (1954).

<sup>16</sup> 42 ECAB 193 (1990).

space. Two years later, he alleged a recurrence of disability after making a sharp turn on July 2, 1988. The Board noted that at the time of the alleged recurrence, the employee was playing basketball when he sustained a dislocation of the left patella. It found that his disability was not the result of the natural consequence or progression of his accepted condition but due to an independent intervening cause. The facts presented in this case are similar, the incident giving rise to appellant's need for medical treatment on February 13, 2008 was the February 8, 2008 event when her dog jumped forward causing her to fall. This was an independent intervening cause of her need for medical treatment and the resulting Toradol injection for which she was subsequently hospitalized on February 19, 2008.

On appeal, appellant contends that her need for treatment on February 13, 2008 was related to her work duties, including moving jump seats that week. The Board finds that the medical evidence is insufficient to establish that appellant was disabled from February 15 to March 15, 2008 due to her accepted work injury. On February 13, 2008 Dr. Haq noted that, after the February 8, 2008 incident with her dog, appellant found that activities such as using the computer, driving, grasping, pushing and pulling increased her right arm pain.

On April 22, 2008 Dr. Haq reiterated that appellant had aggravated her right arm condition when she fell on her right shoulder and elbow on February 8, 2008 after her dog pulled her down. After the fall she experienced increased arm pain from "computer use, driving, grasping, hand motion, pulling, pushing and reaching, lifting and moving seats at work." On April 25, 2008 Dr. Haq noted that the incident involving appellant's dog was not employment related but that subsequent to the fall she aggravated her right arm condition further by performing her daily work activities. Dr. Haq attributed appellant's acute renal failure and interstitial nephritis to, more probably than not, the injection of Toradol used to treat the aggravation of her right lateral epicondylitis. He noted that her physicians found that she was unable to work after she was released from the hospital on February 20, 2008.

On July 29, 2008 Dr. Haq stated that appellant's right elbow epicondylitis resolved by August 9, 2006 and that she "had been pain-free and working since August 9, 2006." He related that she sustained an injury to her right arm on February 8, 2008 while walking her dog. Dr. Haq noted, however, that repetitive work activities had aggravated appellant's condition and resulted in the injection of Toradol. He stated that appellant was "given the medication to treat her right arm pain which was temporarily aggravated by the repetitive work activity. The subsequent reaction should also be indirectly regarded as work related, since she was given it to treat the right elbow pain." Dr. Haq attributed her condition to an intervening injury on February 8, 2008 and repetitive work factors performed after her accepted condition resolved on August 9, 2006 rather than the accepted March 29, 2005 employment injury. Appellant, consequently, has failed to submit rationalized medical evidence showing that she was disabled from February 15 through March 28, 2008 due to her March 29, 2005 work injury. The Office's implementing federal regulations define a recurrence of disability as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury without an intervening injury or new exposure to the work environment.<sup>17</sup> The reports of Dr. Haq attribute appellant's condition and the need for treatment to the intervening

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<sup>17</sup> 20 C.F.R. § 10.5(x).

injury of February 8, 2008 or her new workplace exposures after 2006. By definition, this does not constitute a recurrence of disability due to the accepted March 29, 2005 injury.<sup>18</sup>

**CONCLUSION**

The Board finds that appellant has not established that her disability commencing February 15, 2008 was causally related to her March 29, 2005 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 16 and August 14, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 25, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>18</sup> This decision does not preclude appellant from pursuing an occupational disease claim for new exposures while performing modified duty after 2006.