

affirmed Office decisions dated September 16, 2008 and March 25, 2009, finding that appellant had not established a right shoulder condition or right trigger finger as employment related.²

Appellant returned to work in a modified position. With respect to medical restrictions, in a form report (OWCP-5c) dated November 14, 2007, Dr. Richard Bene, a surgeon, indicated that appellant's permanent work restrictions included five pounds lifting and limited repetitive movements of the wrist and elbow (no more than six per minute). On January 9, 2008 appellant accepted a job offer for a modified mail processing clerk, with a lifting restriction of five pounds.

On March 14, 2009 appellant filed a notice of recurrence of disability (Form CA-2a) commencing March 4, 2009. In a report dated July 16, 2009, Dr. Greg Chambon, a family practitioner, diagnosed anxiety and depression, cervical disc disease, right shoulder pain and carpal tunnel syndrome. By report dated July 21, 2009, Dr. Sean Wheeler, a family practitioner, provided results on examination and diagnosed cervical radiculopathy, right shoulder impingement syndrome and subacromial bursitis.

By decision dated September 23, 2009, the Office denied the claim for a recurrence of disability. It found the medical evidence was insufficient to establish the claim.

Appellant requested a telephonic hearing before an Office hearing representative, which was held on January 8, 2010. At the hearing, she stated that she stopped working in February 2009 because the employing establishment "sent me home" due to excessive absence from work. According to appellant she filed a grievance, and was now receiving administrative pay. She indicated that her proposed removal was reduced to a seven-day suspension and she received some back pay.

In a January 28, 2010 letter, the employing establishment stated that they had provided appellant work within her work restrictions at all times.³ The human resources specialist stated that appellant had been provided several limited-duty jobs, and the window clerk position was considered less strenuous than previous jobs. The specialist noted that in November 2007 appellant was given more severe work restrictions, such as a five-pound lifting restriction, and appellant was kept on a "2499 modified limited-duty assignment" while the employing establishment searched for a permanent position. According to the employing establishment, appellant was placed off work in February 2009 due to absences from work, and there was no medical evidence of record documenting an inability to work due to the accepted conditions. A prearbitration settlement dated August 17, 2009 resulted in the proposed removal being reduced to a seven-day suspension and appellant received a \$3,000.00 payment in lieu of back pay. As to administrative pay, appellant received administrative pay from February 20 to April 10, 2009, and commencing October 10, 2009.

² Docket No. 09-1368 (issued January 26, 2010).

³ The date on the letter is January 28, 2009, but it is evident based on the content of the letter that it was written in 2010 after the January 8, 2010 hearing.

By decision dated March 26, 2010, the hearing representative affirmed the September 23, 2009 Office decision. The hearing representative found appellant had not established a recurrence of disability commencing March 4, 2009.

LEGAL PRECEDENT

The Office's regulations define the term recurrence of disability as follows:

“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. This term also means an inability to work that takes place 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”⁴

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 of record establishes that he or 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 show that he or she cannot perform such light duty. As part of this burden, 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.⁵ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁶

ANALYSIS

Appellant filed a recurrence of disability claim commencing March 4, 2009. The record indicated that she had stopped working in February 2009 as a result of an administrative action by the employing establishment. The Board notes that the record indicated that appellant received administrative pay from February 20 to April 10, 2009. Appellant would not be entitled to both wage-loss compensation and administrative pay during the same period.⁷

⁴ 20 C.F.R. § 10.5(x).

⁵ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ *Maurissa Mack* 50 ECAB 498 (1999).

⁷ See 5 U.S.C. § 8116(a) (an employee receiving compensation may not receive salary, pay or remuneration from the United States, except under the specific instances noted).

As noted above, to establish a recurrence of disability, appellant 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. She did not submit medical evidence showing a change in the accepted employment-related conditions on or about March 4, 2009. At the January 8, 2010 telephonic hearing, appellant acknowledged that the claim for a recurrence of disability was based on her contention that the employing establishment withdrew the light-duty job.

The Office's regulations state that a recurrence of disability can be established if the light-duty job, designed to accommodate an employee's physical limitations due to her employment-related injury, "is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations." Appellant argued that the light-duty job was outside her physical restrictions, but there is no probative evidence to support this contention. At the hearing, she referred to a window clerk position, but it is not clear when she performed this job. The work restrictions were outlined by Dr. Bene in a November 14, 2007 OWCP-5c. The employing establishment appeared to indicate that the window clerk job was performed prior to this report and was consistent with existing work restrictions. There was no evidence presented that the job duties appellant was performing in February 2009 were outside the established work restrictions. The employing establishment stated that appellant was provided with a temporary light-duty job consistent with the November 14, 2007 work restrictions and no probative contrary evidence was presented.

With respect to appellant's contention that the light-duty job was withdrawn, the record does not provide supporting evidence. The employing establishment proposed to remove her from employment based on excessive absenteeism. According to the employing establishment, the absenteeism was not related to the accepted employment injuries in this case. The medical evidence of record does not indicate that absence from work prior to February 2009 was causally related to the employment injuries. A form report dated January 8, 2009 from Dr. Dan Gurley, an orthopedic surgeon, for example, indicated that appellant was unable to work on January 9, 2009 due to right shoulder rotator cuff tendinitis. A right shoulder condition has not been accepted as employment related. In a November 12, 2008 report, Dr. Jeffrey Kaplan, a neurologist, noted appellant currently complained of neck pain and felt like she recently tore something in her shoulder.

The Board finds that the evidence of record does not establish that the employing establishment withdrew a light-duty job made to accommodate employment-related restrictions. Appellant did not establish 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. Accordingly, the Office properly denied the claim for a recurrence of disability commencing on or about March 4, 2009.

CONCLUSION

The Board finds appellant did not establish a recurrence of disability commencing March 4, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 26, 2010 is affirmed.

Issued: February 15, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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