

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

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A.A., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Detroit, MI, Employer )

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**Docket No. 12-1116  
Issued: November 8, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 18, 2012 appellant filed a timely appeal from the March 9, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish a recurrence of disability for the period July 11, 2011 through January 20, 2012 causally related to her accepted injury.

**FACTUAL HISTORY**

OWCP accepted appellant's March 29, 2002 traumatic injury claim in the instant case (File No. xxxxxx836) for contusions of the left arm, elbow, chest and shoulder. It accepted her

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

April 30, 2002 occupational disease claim for left shoulder tendinitis and left cubital tunnel syndrome in File No. xxxxxx142. File No. xxxxxx836 was combined with the instant case (File No. xxxxxx142), with File No. xxxxxx142 serving as the master file. Appellant returned to modified duty on August 20, 2007.

In File No. xxxxxx142, OWCP accepted appellant's recurrence claim for the period October 22, 2008 through March 7, 2010. By decision dated May 19, 2010, it denied her recurrence claim for the period March 27 through June 27, 2010 on the grounds that the record did not contain medical evidence establishing that appellant was disabled during the claimed period. On December 4, 2010 appellant's treating physician, Dr. Tariq M. Awan, Board-certified in family medicine, released appellant to work full time with restrictions, including no repetitive or overhead work and no lifting above the shoulder. On that same date, appellant accepted a full-time position as a modified mail handler, which required her to day-tag parcels as they came off trailers and to walk areas to ensure that parcels were tagged. She worked only one day in the light-duty job.

On January 13, 2011 the employing establishment notified appellant of its intent to terminate her for failure to report to work after working for one day on December 4, 2010 or to provide evidence to support her claim that she was unable to work after that date. Appellant was considered to be absent without leave (AWOL) and was placed on administrative leave without pay. The record in File No. xxxxxx142 reflects that appellant was terminated effective February 25, 2011 for failing to report to work as assigned from December 5 through 23, 2010 and failing to provide any medical documentation of her inability to work.<sup>2</sup>

By decision dated December 20, 2010, OWCP denied appellant's claim for compensation in File No. xxxxxx142 for the period June 28 through December 20, 2010 on the grounds that the medical evidence of record failed to establish that she was disabled for work during that period due to the accepted work injury. By decision dated February 3, 2012, the Board affirmed the December 20, 2010 decision denying her recurrence claim.<sup>3</sup>

By decisions dated May 3 and September 22, 2011, OWCP denied appellant's compensation claim for disability for the period December 21, 2010 through February 22, 2011. In a July 10, 2012 decision, the Board affirmed those OWCP decisions, finding that she had abandoned her light-duty position after December 4, 2010 and failed to establish that her light-duty position was improperly withdrawn.<sup>4</sup>

Appellant filed claims for compensation in File No. xxxxxx142 for the periods February 23 through June 3, 2011 and July 22 through September 22, 2011. In two separate decisions dated December 16, 2011, OWCP denied her claims for compensation, finding that the

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<sup>2</sup> Appellant grieved her potential firing from the employing establishment. She was permitted to return to limited duty in June 2011.

<sup>3</sup> Docket No. 11-1350 (issued February 3, 2012).

<sup>4</sup> Docket No. 12-57 (issued July 10, 2012). The Board also set aside an August 18, 2011 decision denying merit review and remanding the case for a merit review of a May 19, 2010 decision denying a recurrence claim for the period March 27 through June 27, 2010.

period claimed was a continuation of the administrative leave forced upon her when she attempted to return to work on December 4, 2010 and that the medical evidence was insufficient to establish that she was disabled from performing the duties of her modified position during the period in question. In a decision dated October 3, 2012, the Board affirmed the December 16, 2011 decisions.<sup>5</sup>

On January 20, 2012 appellant filed a claim for compensation for the period July 22, 2011 through January 20, 2012 in File No. xxxxxx836. In a letter dated January 25, 2012, OWCP informed appellant that her prior claim for disability under File No. xxxxxx142 for the period July 22 through December 16, 2011 had been denied because she failed to show up for work or to provide medical evidence of her disability. It further informed her that the medical evidence received to date was insufficient to establish disability as of July 22, 2011.

The most recent medical evidence of record in the instant case (File No. xxxxxx836) is a January 20, 2005 report from Dr. A.S. Karnik, a treating physician, who diagnosed left arm and shoulder pain and left cubital tunnel syndrome. Dr. Karnik advised that appellant could return to work on January 22, 2005 with restrictions, including no repetitive lifting with the left shoulder.

Medical evidence received in File No. xxxxxx142 included disability slips from Dr. Awan and Dr. Ateeq K. Rehman, a Board-certified physiatrist, dated March 19 through August 11, 2011. On June 11, 2011 Dr. Awan provided findings that revealed appellant's condition was unchanged and indicated that she was working full time with restrictions. On July 9, 2011 Dr. Rehman noted complaints of left arm pain, provided findings on examination and noted that appellant was working with restrictions. Neither report contained an opinion regarding appellant's ability to work.

In a July 29, 2011 report, Dr. Rehman provided examination findings and diagnosed: left rotator cuff tear tendinitis; left wrist complex regional pain syndrome; right S1 dysfunction; and left cubital tunnel syndrome. He noted that appellant was not working. Dr. Rehman did not, however, provide an opinion as to the cause of her diagnosed conditions or as to whether she was capable of working at that time. On August 10, 2011 he stated that appellant had returned to work on the previous Monday but had not returned since due to a flare up of arm pain.

In an August 8, 2011 disability note, Dr. Awan stated that appellant was unable to work from July 22 through 29, 2011. He indicated that she could return to work on July 30, 2011.

Appellant submitted an August 3, 2011 report from Dr. Mohammad Yusaf, a Board-certified pediatrician, reflecting that she was seen in a hospital emergency room on that date for an acute exacerbation of chronic left shoulder and arm pain. A form report from the Henry Ford Wyandotte Hospital indicated that she was seen in the emergency department on August 19, 2011. Robert McIntee, nurse practitioner, stated that appellant was told not to work until released by her family physician. Triage notes dated August 19, 2011, signed by Dr. Gale Darnell, Board-certified in emergency medicine, reflected that appellant was seen in the emergency room on that date for left shoulder and arm pain.

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<sup>5</sup> Docket No. 12-708 (issued October 3, 2012).

In a November 22, 2011 report, Dr. Harprest Sagar, a treating physician, diagnosed rotator cuff tendinopathy and a chronic problem secondary to previous trauma. Examination reflected left shoulder tenderness and limited range of motion. Dr. Sagar noted that appellant's pain was adequately controlled but did not opine as to whether she was disabled from her light-duty job.

Appellant submitted a December 9, 2011 report from Dr. Sadiq Haque, Board-certified in family medicine, who treated her for left arm pain. On examination, Dr. Haque found acromioclavicular joint tenderness and mild paraspinal tenderness on the left. There was restricted range of motion on the left side; forward flexion and abduction was to about 110 to 150 degrees and external rotation was to 60 degrees. There was decreased sensation in the C7 dermatome on the left. Dr. Haque diagnosed left rotator cuff tendinopathy and subacromial impingement and left C7 radiculitis. He stated that he had given appellant "a work note for a one-arm job." The record also contains a report of a December 9, 2011 x-ray of the left shoulder and elbow.

By decision dated March 9, 2012, OWCP denied appellant's claim for compensation for the period July 11, 2011 through January 20, 2012 on the grounds that the medical evidence was insufficient to establish disability during the claimed period due to the March 28, 2002 work injury.

### **LEGAL PRECEDENT**

Section 10.5(x) of the OWCP's regulations define "recurrence of disability" as 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>6</sup> 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, (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>7</sup>

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 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 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.<sup>8</sup>

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<sup>6</sup> 20 C.F.R. § 10.5(x) (2002). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

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

<sup>8</sup> *Conard Hightower*, 54 ECAB 796 (2003).

The Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

OWCP denied appellant's compensation claim for the period July 11, 2011 through January 20, 2012 on the grounds that the evidence failed to establish that she was disabled due to her accepted injury during that period. The Board finds that OWCP properly denied appellant's claims for compensation for the claimed period.

In its July 10, 2012 decision in File No. xxxxxx142, the Board affirmed the denial of appellant's compensation claim for the period December 21, 2010 through February 22, 2011. The Board found: that the employing establishment had provided her with a modified position that was within her medical restrictions; that she abandoned the position on December 4, 2010 without providing sufficient medical evidence that she was disabled from performing the duties of the position; and that she failed to establish that her light-duty position was improperly withdrawn. The findings of the Board in its July 10, 2012 decision remain the law of this case. As it was established that the modified position was suitable and that it was not improperly withdrawn, appellant had the burden to establish that she was disabled from performing the duties of the position during the claimed period.<sup>10</sup>

In its October 3, 2012 decision, the Board affirmed OWCP's December 16, 2011 decision in File No. xxxxxx142 denying appellant's claim for compensation for the period July 22 through September 22, 2011. The Board found that the period claimed was a continuation of the administrative leave forced upon appellant when she attempted to return to work on December 4, 2010 and that the medical evidence was insufficient to establish that she was disabled from performing the duties of her modified position during the period in question due to her accepted left shoulder tendinitis and left cubital tunnel syndrome. The findings of the Board in its October 3, 2012 decision remain the law of this case. As it was established that the period claimed was a continuation of her administrative leave imposed upon her due to her own actions, appellant had the burden to establish that she was disabled from performing the duties of the position during the claimed period.<sup>11</sup> The Board finds that appellant has not demonstrated that she was disabled from working her modified position from July 22, 2011 through January 20, 2012 due to her accepted conditions in File No. xxxxxx836 of contusions of the left arm, elbow, chest and shoulder.

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<sup>9</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> The Board has final authority to determine questions of law and fact. Its determinations are binding upon OWCP and must, of necessity, be so accepted and acted upon by the Director. Otherwise there could be no finality of decisions; the whole appeals procedure would be nullified and questions would remain moot. *Anthony Greco*, 3 ECAB 84, 85 (1949).

<sup>11</sup> *Id.*

Relevant medical evidence of record includes reports dated February 12 and March 19, 2011 from Dr. Awan, who provided examination findings and diagnoses pertaining to appellant's left elbow, left shoulder and back and noted that she was off work due to her restrictions. Dr. Awan did not, however, provide an opinion as to whether her condition had worsened or whether she was disabled during the claimed period due to her accepted injury. He did not explain how appellant's diagnosed condition prevented her from performing the duties of her modified position. Dr. Awan's reports therefore are of diminished probative value and are insufficient to establish her claim.

On June 11, 2011 Dr. Awan provided findings that revealed appellant's condition was unchanged and indicated that she was working full time with restrictions. In an August 8, 2011 disability note, he stated that she was unable to work from July 22 through 29, 2011. Dr. Awan's cryptic note did not contain examination findings, a definitive diagnosis or an explanation as to how appellant's claimed disability was causally related to her accepted condition. Therefore, it is of limited probative value.

In a July 29, 2011 report, Dr. Rehman provided examination findings and diagnosed left rotator cuff tear tendinitis; left wrist complex regional pain syndrome; right S1 dysfunction and left cubital tunnel syndrome. He noted that appellant was not working. Dr. Rehman did not, however, provide an opinion as to the cause of her diagnosed conditions or as to whether she was capable of working at that time. On August 10, 2011 he stated that appellant had returned to work on the previous Monday but had not returned since due to a flare up of arm pain. Dr. Rehman did not explain how the flare up of her arm pain was causally related to her accepted injury. A medical opinion that is not fortified by rationale is of diminished probative value.<sup>12</sup> Dr. Rehman did not address how appellant's condition had worsened to the degree that she was no longer able to perform the duties of her modified position during the claimed period. As noted, the Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought.<sup>13</sup>

On November 22, 2011 Dr. Sagar diagnosed rotator cuff tendinopathy and a chronic problem secondary to previous trauma. He provided examination findings and noted that appellant's pain was adequately controlled. Dr. Sagar's report does not, however, contain an opinion as to whether she was disabled from her light-duty job. Therefore, his report is of diminished probative value.<sup>14</sup>

On December 9, 2011 Dr. Haque provided examination findings and diagnosed left rotator cuff tendinopathy and subacromial impingement and left C7 radiculitis. Although he stated that he had given appellant "a work note for a one-arm job," he did not opine as to the cause of appellant's condition or indicate that she was totally disabled from performing the duties of the light-duty position. Therefore, Dr. Haque's report is of limited probative value.<sup>15</sup>

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<sup>12</sup> *Cecilia M. Corley*, 56 ECAB 662 (2005).

<sup>13</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>14</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>15</sup> *Id.*

The record contains an August 19, 2011 report from a nurse practitioner. As nurse practitioners are not considered to be physicians under FECA, this report does not constitute probative medical evidence.<sup>16</sup>

The remaining medical evidence of record, including emergency room records, x-ray and MRI scan reports, disability slips and prescription notes, that do not contain an opinion on the cause of appellant's condition or on the issue of her disability, are of limited probative value and are insufficient to establish appellant's recurrence claim.

Appellant has failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her modified employment. She has provided insufficient rationalized opinion evidence establishing that she was disabled from July 22, 2011 through January 20, 2012, or any evidence that the employing establishment withdrew, or was unable to provide her with a light-duty job within her medical restrictions. As appellant has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability due to her accepted employment injury, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability that was causally related to her accepted injury for the period July 22, 2011 to January 20, 2012.<sup>17</sup>

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<sup>16</sup> A medical report may not be considered to be probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined by FECA. Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>17</sup> The Board notes that appellant's Notice of Recurrence dated January 20, 2012 claimed disability commencing July 22, 2011. Therefore, OWCP's March 9, 2012 decision will be modified to reflect a denial of benefits for the period July 22, 2011 through January 20, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: November 8, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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