



compensation for intermittent wage loss for periods of work-related disability. On December 8, 2011 Dr. Mark H. Chan, an attending specialist in physical medicine and rehabilitation, reported that appellant could continue to work full duty with no restrictions.

On January 24, 2012 appellant filed a Form CA-7, claiming compensation for wage loss from January 7 to 13, 2012.

A Form CA-7a time analysis form dated January 12, 2012 noted that appellant missed work due to “flare-up” for 4 hours on January 7, 2012, 8 hours on January 8, 2012, 8 hours on January 9, 2012, and 8 hours on January 10, 2012, for a total of 28 hours.

Appellant submitted a January 9, 2012 acupuncture treatment form report. In a January 10, 2012 work status form, Dr. Chan stated that appellant had been off work since January 7, 2012 and could return to work on January 13, 2012.

In a January 10, 2012 report, Dr. Chan stated that appellant had developed a flare-up of left-sided neck/trapezius pain due to her work duties. On examination, appellant had tightness in her left cervical paraspinals/trapezius and moderate tenderness at the left mid-medial scapular region, with full left shoulder range of motion and negative impingement.

Appellant submitted a January 6, 2012 form report, received by OWCP on February 13, 2012. She described a new incident which allegedly occurred on January 2, 2012. Appellant indicated that she sustained strains to her elbow, neck and shoulder. She also stated that she had a headache for two days. The report was not signed by a physician.

In a January 24, 2012 report, Dr. Chan stated that appellant complained of pain in both shoulders, left greater than right, associated with an injury at work. He related that she had experienced neck and shoulder pain for approximately three years, since she had to lift heavy mail at a fast pace. Dr. Chan stated that appellant presented with bilateral shoulder pain possibly due to impingement or a right thoracic cuff strain.

By letter dated February 2, 2011, OWCP asked appellant to submit additional factual and medical evidence in support of her claim. It advised her that a recurrence of disability occurs when, after apparent recovery or partial recovery from the initial injury, an employee again became disabled because of the original injury without an intervening incident. OWCP asked appellant to submit a comprehensive medical report from her treating physician which addressed how her inability to work full time was related to the accepted work injury.

In a disability slip dated February 6, 2012, Dr. Chan stated that appellant was instructed to remain off work from January 7 to 13, 2012 due to a “flare of pain.” Appellant indicated in a handwritten note at the bottom of the form that there had been no recurrence. She was still under a doctor’s care and filed a new claim for her right side, as she had tried not to use her left side and had experienced periodic flare-ups.

In a February 15, 2012 statement, appellant asserted that she was not claiming a recurrence of disability with regard to her absence from work from January 3 to 13, 2012. She filed a new CA-1 claim, under case number xxxxxx746, for a new injury to her right upper

extremity which occurred on January 2, 2012.<sup>2</sup> As to appellant's claim for her accepted left shoulder and neck conditions, under case number xxxxxx043, she asserted that this constituted a "continuance" of her accepted conditions, which periodically caused flare-ups and for which she continued to receive treatment.

In a January 3, 2012 disability slip, Dr. Chan noted that appellant was off work from January 3 to 4, 2012 due to a "flare of pain." Appellant also submitted several reports documenting her treatment for physical therapy and acupuncture.

By decision dated April 16, 2012, OWCP denied compensation for wage loss for the period January 7 to 13, 2012.

On April 19, 2012 appellant requested a review of the written record.

In a statement dated April 19, 2012, appellant asserted that, as to her claim for compensation for wage loss January 7 to 13, 2012, she sustained a neck strain that was causing her pain on the left side and causing her to have headaches. She stated that Dr. Chan's progress reports supported that she was disabled during this period. On April 26, 2012 appellant related that she had been having headaches off and on since her injury. She related that "On January 2, I could not function I lay down as soon as I got home because of my headache. I did not notice I was hurt until my medication had worn off. My headache at that time was more painful than the new injury. I call my job and said I was in pain due to my left side injury."

By decision dated July 9, 2012, an OWCP hearing representative affirmed the April 16, 2012 OWCP 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 has 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> A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>4</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>5</sup>

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<sup>2</sup> OWCP accepted this claim for sprain of the right shoulder/upper arm and right medial epicondylitis. It paid compensation for continuation of pay on the dates she claimed.

<sup>3</sup> *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

<sup>4</sup> *I.J.*, 59 ECAB 408 (2008); *Nicola Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>5</sup> *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

## ANALYSIS

OWCP accepted that appellant sustained left shoulder and cervical sprains on October 28, 2009. Appellant filed a claim for wage-loss compensation for January 7 to 13, 2012 and submitted treatment slips from Dr. Chan, who noted that she was off work since January 3, 2012. The Board finds that she has not established a recurrence of disability causally related to her accepted October 28, 2009 injury.

Dr. Chan had reported on December 8, 2011 that appellant could continue to perform full-duty work, with no restrictions. He thereafter signed disability slips advising that she was disabled from January 3 to 4, 2012 and from January 7 to 13, 2012 due to a “flare of pain.”<sup>6</sup> Appellant filed a new claim for an injury she sustained at work on January 2, 2012 causing injury to her elbow, shoulder and neck regions. She also contends that her left shoulder condition was a continuance of the October 28, 2009 injury. Appellant did not meet her burden of proof because she has not established that she sustained a spontaneous recurrence of her left shoulder condition, causing total disability as of January 7, 2012.

Dr. Chan did not offer a rationalized medical opinion explaining why appellant’s left shoulder condition was a spontaneous return of her 2009 injury, or caused disability as of January 7, 2012. He opined that generally appellant sustained a flare-up of pain. The Board notes that pain is generally a symptom and not a firm medical condition. Dr. Chan did not explain how appellant’s left shoulder condition caused disability after January 7, 2012 related to the 2009 injury.

The Board notes that Dr. Chan did not provide a probative medical opinion addressing why appellant was disabled for work due to the accepted left shoulder and cervical conditions for the period January 7 through 13, 2012.<sup>7</sup> While his January 10, 2012 report indicated that appellant had tightness in her left cervical paraspinals/trapezius and tenderness at the left mid-medial scapular region, he failed to provide any medical explanation as to how the symptoms rendered her unable to perform her work. None of Dr. Chan’s reports indicated that her accepted left shoulder or cervical conditions resulted in any specific periods of disability.

To establish entitlement to compensation, an employee must establish through probative medical evidence that disability for work resulted from the employment injury. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>8</sup> Appellant failed to establish that her accepted left shoulder or cervical conditions caused disability from January 7 to 13, 2012. Because she has not provided a rationalized opinion

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<sup>6</sup> As noted above, appellant filed a separate claim for a January 2, 2012 injury to her right upper extremity, which OWCP accepted and paid compensation on January 3 and 4, 2012.

<sup>7</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>8</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

supporting her disability for work for the period in question, OWCP properly denied her claim for wage-loss compensation.

**CONCLUSION**

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for wage loss from January 7 to 13, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 9 and April 16, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 23, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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