

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

V.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oakland, CA, Employer**

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**Docket No. 13-55
Issued: May 29, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 11, 2012 appellant filed a timely appeal from a May 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her recurrence claim. Pursuant to the Federal Employees' Compensation Act¹ (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 established that she sustained a recurrence of disability commencing December 3, 2011 causally related to her accepted June 7, 2011 employment injury.

FACTUAL HISTORY

On June 10, 2011 appellant, then a 51-year-old mail processor, filed a traumatic injury claim alleging that on June 7, 2011 she sustained injuries to her chest, right breast and right

¹ 5 U.S.C. § 8101 *et seq.*

shoulder when she tripped and fell. OWCP accepted the claim for chest wall contusion and right shoulder strain. Following her injury, appellant was released to return to modified work with restrictions. She was subsequently released to full-duty work with no restrictions on September 11, 2011.

In reports dated September 23 and October 14, 2011, Dr. Zale Tang, a treating physician Board-certified in preventive medicine, diagnosed chest contusion, right shoulder sprain/strain, neuropathy, shoulder contusion and neck sprain. He provided physical findings and reported that appellant had returned to full-duty work on September 10, 2011 following the June 7, 2011 employment injury.

In an October 25, 2011 report, Dr. Tang provided physical findings and diagnosed chest contusion, right shoulder sprain/strain, neuropathy, neck sprain, carpal tunnel syndrome and shoulder region contusion. He noted that the accepted chest contusion was cured with an improving accepted right shoulder strain. Dr. Tang reported that appellant had been working full duty since September 10, 2011. He advised that she was not to work on October 25, 2011, but was capable of performing modified work from October 26 through November 15, 2011. The restrictions for appellant's modified work included up to two hours of neck motion; repetitive right hand motions including gripping and grasping; and no lifting, pushing or carrying more than 10 pounds.

In a November 23, 2011 memorandum of a telephone call, OWCP noted that appellant was not working because of a neck injury.

On November 26, 2011 OWCP received appellant's November 21, 2011 claim for a recurrence of disability beginning November 18, 2011 due to the withdrawal of her limited-duty assignment by the employing establishment. Appellant described her condition since returning to work as an injured shoulder and neck condition.

In support of her claim, appellant submitted a November 14, 2011 Industrial Work Status Report from Dr. Tang providing work restrictions beginning that day. Dr. Tang diagnosed cervical radiculopathy, neuropathy, moderate right carpal tunnel syndrome, cured chest contusion, improving right shoulder sprain/strain. He noted that appellant's right carpal tunnel syndrome was an old problem. Dr. Tang provided work restrictions including up to two hours per day of neck motions; up to three hours of repetitive right hand motion and gripping/grasping; and no carry, lifting, pushing or pulling more than five pounds. He stated that appellant returned to full duty for a few weeks, which was revised three weeks prior to modified duty due to a worsening of her symptoms.

On December 1 and 17, 2011 appellant filed claims for compensation (Form CA-7) for the period December 3 to 30, 2011. On the back of the form the employing establishment noted that there was no work available within her work restrictions.

By letter dated December 20, 2011, OWCP advised appellant of the evidence required to support a recurrence claim. It also informed her that the conditions of neck sprain, neuropathy and right carpal tunnel syndrome were not accepted as due to the accepted June 7, 2011 employment injury.

In response, appellant submitted a statement and a December 9, 2011 report from Dr. Alan C. Roth, Jr., an examining Board-certified physiatrist. She noted that while she returned to full duty on September 10, 2011, she continued to seek medical treatment for her pain. When appellant returned to work on September 10, 2011 she stated that she returned to full-duty work performing her regular job duties.

Dr. Roth noted that appellant had been referred by Dr. Tang for evaluation of the employment injury on June 7, 2011. He noted questionable findings on a past electromyography study. The physical findings included bilateral paraspinal tenderness and normal range of motion in the shoulders, elbows and wrists.

On December 29, 2011 appellant filed a claim for wage-loss compensation for the period December 31 to January 13, 2012.² On the back of the form, the employing establishment noted that there was no work available.

On January 9 and 13, 2012 OWCP received reports dated December 6 and 28, 2011 from Dr. Tang, who diagnosed cervical radiculopathy, neuropathy, moderate right carpal tunnel syndrome, cured chest contusion, improving right shoulder sprain/strain and providing work restrictions.

On January 11, 2012 Dr. Roth noted that appellant was sent home from work due to her 10-pound lifting restriction. An electromyography study revealed mild right carpal tunnel syndrome.

By decision dated January 24, 2012, OWCP denied appellant's claim for a recurrence of disability beginning December 3, 2011.

Thereafter, OWCP received her January 25, 2012 claim for compensation for the period January 14 to 27, 2012 and a January 18, 2012 release to full duty and report by Dr. Tang who diagnosed cervical radiculopathy, neuropathy, moderate right carpal tunnel syndrome, cured chest contusion, improving right shoulder sprain/strain. Dr. Tang released appellant to full duty with no restrictions.

In a February 16, 2012 report, Dr. Roth noted that appellant had returned to work as a mail processor with a lifting restriction of 10 pounds.

On February 20, 2012 appellant requested a review of the written record by an OWCP hearing representative.

On March 19, 2012 Dr. Roth noted that appellant was seen for complaints of right shoulder and neck soreness. He indicated that appellant could continue with unrestricted work.

By decision dated May 17, 2012, OWCP's hearing representative affirmed the January 24, 2012 decision.³

² Appellant noted January 13, 2011, which appears to be a typographical error as the year should be "2012" not "2011."

LEGAL PRECEDENT

OWCP's implementing regulations define a 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁵

For conditions not accepted by OWCP as being employment related, it is the claimant's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.⁶

ANALYSIS

OWCP accepted appellant's claim for chest wall contusion and right shoulder strain. Appellant returned to modified work following the June 7, 2011 employment injury and to full-duty work on September 10, 2011. She claimed wage-loss compensation beginning December 3, 2011 due to the withdrawal of work within her restrictions and argued that the disability was due to her accepted June 7, 2011 employment injury. The issue on appeal is whether appellant has submitted sufficient medical evidence to establish that her disability commencing December 3, 2011 was causally related to her accepted June 7, 2011 employment injury. As she claims the withdrawal of her modified job was the cause of her recurrence, she must also establish that the modified job was due to work restrictions due to her accepted conditions. The Board finds that appellant failed to meet her burden of proof.

Dr. Tang provided work restrictions and diagnosed cervical radiculopathy, neuropathy, moderate right carpal tunnel syndrome, cured chest contusion, improving right shoulder sprain/strain. Dr. Roth diagnosed right carpal tunnel syndrome, neck pain, mild cervical spine degenerative changes and provided work restrictions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁷ Neither Dr. Tang nor Dr. Roth addressed the cause of appellant's disability commencing December 3, 2011 in relationship to the conditions

³ The Board notes that, following the May 12, 2012 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *MOB.*, Docket No. 09-176 (issued September 23, 2009); *JET.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁴ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Phillip L. Barnes*, 55 ECAB 426 (2004).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997), *Donald T. Pippin*, 54 ECAB 631 (2003).

⁶ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁷ *J.M.*, 58 ECAB 303 (2007); *Ellen L. Noble*, 55 ECAB 530 (2004).

accepted by OWCP as related to the accepted injury. Their reports are of diminished probative value and insufficient to support appellant's claim that her recurrence of disability on and after December 3, 2011 causally related to her accepted June 7, 2011 employment injury. Moreover, OWCP has not accepted the conditions of right carpal tunnel syndrome, neck sprain, mild cervical degenerative changes, neuropathy or cervical radiculopathy. Neither physician provided any explanation as to how these conditions were caused or aggravated by the accepted June 7, 2011 employment injury.

On appeal appellant contends that it was not her fault that the employing establishment did not have any available work within her restrictions that she is entitled to wage-loss compensation for this period. Appellant attributed the recurrence to the withdrawal of her modified job and noted treatment for neck and shoulder conditions. The record establishes, however, that she was released to return to full-duty work with no restrictions by Dr. Tang on September 10, 2011. She performed her usual work duties upon her return to work. On October 25, 2011 Dr. Tang indicated that appellant was unable to continue in her regular position and provided work restrictions beginning October 26, 2011. Dr. Tang diagnosed resolved wall contusion, recovering right shoulder strain, neuropathy, neck sprain, carpal tunnel syndrome and shoulder region contusion. As noted, the conditions of neuropathy, neck sprain, carpal tunnel syndrome or shoulder region contusion are not accepted by OWCP. It is appellant's burden to establish that the conditions were causally related to the accepted June 7, 2011 employment injury particularly.⁸ Dr. Tang did not explain how appellant's work restrictions or limitations as of October 26, 2011 were due to her accepted employment injury of right shoulder strain. There is insufficient evidence that the work restrictions were due to the conditions accepted by OWCP, given that she was released to full duty on September 10, 2011, Dr. Tang noted that her chest contusion had resolved and her shoulder strain was resolving. The restrictions provided by Dr. Tang involved the neck and hand. As there is no evidence that the modified position was based on restrictions due to appellant's accepted conditions of chest contusion and right shoulder strain, the withdrawal of the position is insufficient to establish a recurrence of disability due to the accepted injury.

It is appellant's burden of proof to provide evidence from a qualified physician to support the recurrence of total disability for any period of time. She failed to submit rationalized medical evidence establishing that her claimed recurrence of disability commencing December 3, 2011 or withdrawal of light-duty work was causally related to the accepted employment injury and therefore has failed to meet 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 has not established a recurrence of disability on and after December 3, 2011 causally related to her accepted June 7, 2011 employment injury.

⁸ See *Mary A. Celia*, 55 ECAB 626 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 17, 2012 is affirmed.

Issued: May 29, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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