

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

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C.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Trenton, NJ, Employer )

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**Docket No. 15-1582  
Issued: November 9, 2015**

*Appearances:*

*Michael D. Overman, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 15, 2015 appellant, through counsel, filed a timely appeal from a February 26, 2015 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 has established a recurrence of disability commencing October 5, 2013 causally related to accepted brachial, thoracic, and lumbosacral neuritis/radiculitis.

**FACTUAL HISTORY**

On August 20, 2013 appellant, then a 51-year-old mail processing clerk in light-duty status, filed an occupational disease (Form CA-2) claiming that on or before October 1, 2010 she

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

sustained conditions of her neck, both arms, both wrists, both hands, and back due to repetitive reaching, pulling, bending, and lifting. She first realized that these conditions were work related on May 29, 2013. Appellant did not stop work. She was in modified-duty status as of the date of the claim.<sup>2</sup>

Appellant was followed by Dr. Nasser Ani, an attending Board-certified orthopedic surgeon. In an August 5, 2013 report, Dr. Ani noted her complaints of back and neck pain at work since 2011. He diagnosed bilateral carpal tunnel syndrome,<sup>3</sup> a cervical disc bulge, lumbar disc bulge, a degenerative C4 disc, cervical radiculitis, lumbar radiculopathy, and sprains and strains of the both and hands. In an August 16, 2013 report, Dr. Ani additionally diagnosed small disc herniations at C4-5, C5-6, and C6-7, improved since 2011, a small left-sided herniated nucleus pulposus at L3-4 with mild foraminal stenosis.<sup>4</sup>

On September 7, 2013 OWCP accepted that appellant sustained brachial, thoracic, and lumbosacral neuritis or radiculitis.

In a September 27, 2013 letter, appellant described repetitive lifting, bending, twisting, pulling, pushing, reaching, and grasping as a mail handler and mail sorter beginning in 1994. She noted that she began work at the employing establishment in June 2013, working flats.

Appellant filed a claim for compensation (Form CA-7) commencing October 5, 2013. She stopped work on October 6, 2013. Appellant claimed compensation through November 15, 2013 and continuing.

In November 14, 2013 and January 7, 2014 letters, OWCP advised appellant of the additional evidence needed to establish her claim, including her physician's explanation of why the accepted conditions would disable her for work on and after October 5, 2013. It afforded her 30 days to submit such evidence.

In response, appellant submitted a September 23, 2013 slip from Dr. Ani releasing her to light duty, with lifting limited to 15 pounds and driving restricted to 20 minutes at a time. Counsel contended that when she presented Dr. Ani's September 23, 2013 restrictions to her

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<sup>2</sup> OWCP denied appellant's six prior claims: File No. xxxxxx158 for erythema nodosum sustained on or before November 12, 2008; File No. xxxxxx551 for an allergic reaction to dust on March 19, 2009; File No. xxxxxx991 for bilateral shoulder conditions, bilateral carpal tunnel syndrome, and tendinitis of the upper extremities sustained on or before March 27, 2009 and a surgery to the left hand October 27, 2009; File No. xxxxxx997 for multiple cervical disc herniations sustained on or before September 5, 2009; File No. xxxxxx835 for multiple cervical disc herniations sustained on or before May 19, 2011; and File No. xxxxxx418 for tenosynovitis of the left hand, wrist, and index finger sustained on or before June 9, 2012. File No. xxxxxx418 was before the Board under Docket No. 13-0518, with a decision and order issued May 16, 2013 affirming OWCP's October 4, 2012 merit decision denying the claim. Appellant's prior claims are not before the Board on the present appeal.

<sup>3</sup> September 10, 2013 electromyography and nerve condition velocity studies showed bilateral median nerve neuropathies at both wrists, with no evidence of cervical radiculopathy.

<sup>4</sup> An August 16, 2013 magnetic resonance imaging scan showed cervical spondylosis slightly improved when compared to 2011 studies, with osteophytes from C3 to C7, and mild disc protrusions at C4-5 and C6-7.

supervisor on October 6, 2013 she was “told that [appellant] must live by her restrictions and was not offered suitable limited[-]duty work.”

On November 20, 2013 Dr. Ani recommended bilateral median nerve releases as conservative treatment failed to relieve appellant’s carpal tunnel syndrome. He opined that her condition was “directly related to the accident” and that delay in treatment would affect her prognosis. Dr. Ani renewed restrictions against lifting more than 15 pounds or driving for longer than 20 minutes at a time. He prescribed additional physical therapy. Renewed diagnoses and restrictions on December 18, 2013.

In a December 10, 2013 letter, Dr. Ani noted that appellant presented on August 5, 2013 complaining of neck and back pain “since an injury that [appellant] sustained at work on multiple occasions.” Appellant had restricted cervical and lumbar motion with some pain on palpation. Dr. Ani diagnosed C4-5, C5-6, C6-7, and L3-4 disc herniations, and bilateral carpal tunnel syndrome. He opined that the lumbar disc herniation and carpal tunnel syndrome were “directly related” to appellant’s postal employment, that the cervical disc herniations were possibly related to repetitive motion at work.

On December 23, 2013 Dr. Ani explained that the work restrictions prescribed on September 23, 2013 were “directly related to the conditions of brachial neuritis/radiculitis and/or thoracic/lumbosacral neuritis/radiculitis.”

On January 15, 2014 Dr. Ani released appellant to work for four hours a day, with no pulling, twisting, bending, repetitive lifting, sitting from a standing position, “[s]imply standing for a certain amount of time,” “[w]alking for certain distance,” climbing up or down stairs, and driving for more than 20 minutes at a time. In a February 3, 2014 letter, he explained that the prescribed work restrictions were “necessary to avoid aggravating the conditions in which [appellant] sustained at work on October 1, 2010.”<sup>5</sup>

By decision dated February 27, 2014, OWCP denied appellant’s claim for compensation from October 5, 2013 onward as she did not submit medical evidence supporting total disability for the claimed period.

Appellant disagreed and on March 6, 2014 requested a hearing, before an OWCP hearing representative later changed to a request to a review of the written record.<sup>6</sup>

On April 21, 2014 appellant submitted a November 26, 2013 notice of recurrence (Form CA-2a) claiming total disability from October 6, 2013 onward. Appellant’s supervisor stated that, as of October 5, 2013, appellant was on modified duty, with “work in manual letters or flats.”

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<sup>5</sup> Appellant participated in physical therapy in January and February 2014.

<sup>6</sup> On February 25, 2014 the employing establishment offered appellant a modified-duty position for four hours a day, with sitting or standing two hours, lifting, reaching and simple grasping for up to two hours, intermittent twisting for two hours, and dispatching trays or buckets weighing less than six pounds for up to two hours. Appellant declined the offer of February 28, 2014, stating that she could not accept a job until her physician approved it.

In a May 16, 2014 letter, OWCP advised appellant of the additional evidence needed to establish her claim for recurrence of disability, including her physician's statement explaining how and why the accepted brachial or thoracic neuritis would cause total disability for work on and after October 5, 2013.

In response, appellant provided her June 5, 2014 letter, contending that on October 6, 2013 the employing establishment informed her that no work was available within Dr. Ani's September 23, 2013 restrictions. She asserted that she remained unable to work eight hours a day or to drive for more than 20 minutes.

Appellant submitted chart notes from Dr. Ani dated from April 16 to June 12, 2014, finding her neck, thoracic, and lumbar pain unchanged, with continuing bilateral carpal tunnel syndrome. Dr. Ani released her to work four hours a day with no pushing, pulling, or twisting, and no driving more than 20 minutes at a time.

Dr. Adeel Ahmad, an attending Board-certified physiatrist, administered C7-T1 epidural steroid injections on April 17, 2014, authorized by OWCP. Appellant participated in physical therapy from January to May 2014.

By decision dated July 17, 2014, OWCP denied appellant's recurrence claim as the medical evidence did not establish that she was totally disabled for work on and after October 6, 2013 due to the accepted brachial, thoracic, or lumbosacral radiculitis/neuritis.<sup>7</sup>

Appellant disagreed with the July 17, 2014 decision, and on July 24, 2014, through counsel, requested a video hearing, held December 5, 2014. At the hearing, appellant contended that she was sent home from work on October 6, 2013 as the employing establishment could not accommodate her work limitations. She alleged that she was not given written modified-duty assignments, but that her duties were explained to her ad hoc. Appellant explained that she could no longer commute to work as her duty station was a 45-minute drive from her home, more than the 20 minutes allowed by Dr. Ani. She noted that there was no public transportation available and that she did not have family members available to drive her.

Following the hearing, appellant submitted additional evidence. In chart notes from July 23, 2013 to November 6, 2014, Dr. Ani found her condition unchanged. He released appellant to modified duty on November 6, 2014 within previous restrictions. Dr. Ani noted that she must rest 30 minutes for every 30 minutes of driving. In a December 4, 2014 letter, he affirmed the work restrictions he listed on January 15, 2014, explaining that they were "necessary to avoid worsening of the conditions in which [appellant] sustained at work on October 1, 2010." Appellant underwent additional lumbosacral injections. Her condition remained unchanged as of January 8, 2015.

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<sup>7</sup> Appellant filed claims for compensation (Form CA-7) for the periods August 10, 2012 to May 17, 2013 and July 11 to October 3, 2013. In a September 3, 2014 letter, OWCP advised her that because her recurrence claim was denied, her claim for compensation from August 10, 2012 to May 17, 2013 was not payable. By decision dated October 23, 2014, it denied appellant's claims for wage-loss compensation from July 11 to October 3, 2013 as there was insufficient medical evidence supporting total disability for work for that period due to the accepted cervical, thoracic, and lumbosacral neuritis.

By decision dated February 26, 2015, an OWCP hearing representative affirmed the July 17, 2014 decision, finding that the medical evidence had not established that appellant was disabled for work on and after October 5, 2013 due to accepted brachial, thoracic, or lumbosacral neuritis/radiculitis. The hearing representative found that there was no evidence of a change in her light-duty job requirements. Also, appellant had failed to submit sufficient evidence that she had no other means of commuting to and from work.

### **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.<sup>8</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 is withdrawn or when the physical requirements of such an assignment are altered such that they exceed the employee's physical limitations.<sup>9</sup> Appellant has the burden of establishing that there was no medically appropriate light duty available for the claimed period.<sup>10</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 the employee 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 to 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>11</sup> This includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.<sup>12</sup> An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.<sup>13</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained brachial, thoracic, and lumbosacral neuritis or radiculitis on or before October 1, 2010. On October 22, 2013 appellant claimed a recurrence of

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<sup>8</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2.b (June 2013). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

<sup>9</sup> *J.F.*, 58 ECAB 124 (2006).

<sup>10</sup> *Id.*

<sup>11</sup> *Albert C. Brown*, 52 ECAB 152 (2000); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>12</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); see *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>13</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

disability commencing October 5, 2013 while on light duty. She has the burden of providing sufficient rationalized medical evidence supporting a spontaneous worsening of the accepted brachial, thoracic, and lumbosacral neuritis.<sup>14</sup> However, appellant did not assert or establish that the accepted conditions deteriorated on their own. Rather, she contended that the employing establishment withdrew light-duty work or refused to accommodate her medical restrictions.

The Board has held that withdrawal of a light-duty job formulated to comply with an employee's work-related medical limitations can constitute a recurrence of disability.<sup>15</sup> However, there was no withdrawal of light duty established in this case.

Counsel contended that on October 6, 2013 when appellant presented restrictions to her supervisor from Dr. Ani, an attending Board-certified orthopedic surgeon, the employing establishment stated that it had no work within those limitations. Appellant repeated this contention in her June 5, 2014 letter, and at the December 5, 2014 hearing. She contended that her assignments were given orally and that she did not have an official job description. However, appellant did not submit any evidence supporting that the employing establishment withdrew light duty as of October 5, 2013. She did not provide a statement from her supervisor, job descriptions, witness statements, or other documentation corroborating her account of events.

An additional difficulty with this case is Dr. Ani's admission that the work restrictions he prescribed were preventative in nature. He asserted that the restrictions were directly related to the accepted brachial, thoracic, and lumbosacral radiculitis, but in the sense that they were necessary to avoid worsening those conditions. However, the Board has long held that prophylactic work restrictions do not establish a basis for wage-loss compensation.<sup>16</sup> A fear of future injury is not compensable under FECA.<sup>17</sup>

The Board finds that appellant did not submit sufficient medical evidence to establish a spontaneous worsening of the accepted conditions, or a withdrawal of light duty. OWCP's February 26, 2015 decision denying the recurrence claim is therefore proper under the law and facts of this case.

On appeal, counsel contends that under the Board's holding in *Jackie B. Wilson*,<sup>18</sup> a claimant's showing that there was no light-duty work available within his or her restrictions constitutes a recurrence of disability. He asserts that appellant's statements at the hearing are sufficient to meet her burden of proof in this regard. However, as stated, there is no official job description of record for her duties as of October 5, 2013, nor is there evidence that her job duties changed or that the position was withdrawn.

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<sup>14</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>15</sup> *Supra* note 9.

<sup>16</sup> *S.O.*, Docket No. 14-1303 (issued April 29, 2015).

<sup>17</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>18</sup> 39 ECAB 195 (1988).

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 commencing October 5, 2013 causally related to accepted brachial, thoracic, and lumbosacral neuritis and radiculitis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Program dated February 26, 2015 is affirmed.

Issued: November 9, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board