

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA CHEN and U.S. POSTAL SERVICE,
PLAZA STATION, Pasadena, CA

*Docket No. 02-217; Submitted on the Record;
Issued May 14, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on December 21, 1999; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

On September 12, 1997 appellant, then a 39-year-old window clerk, filed a notice of occupational disease alleging that she injured her right elbow. The Office accepted appellant's claim for right elbow contusion and right elbow strain. On May 14, 1998 the Office also accepted appellant's claim for right lateral epicondylitis. Appellant returned to light-duty work with restrictions of no lifting, carrying, or pushing more than 10 pounds and no key punching or typing.

Dr. David Wei-Ping Huang, a Board-certified orthopaedic surgeon, indicated in a May 15, 1998 report that appellant returned to full-duty work in April. He stated:

"For some reason, [appellant] was placed back in window service which requires frequent lifting and moving of her right upper extremity for about two weeks. She developed more pain and aching around the right elbow and began to develop some pain and aching around the right shoulder area. Her symptoms are caused by the frequent moving, lifting and carrying that was required at her job."

Dr. Huang diagnosed appellant with tendinitis, muscle sprain and strain over the elbow and shoulder and recurrence of lateral epicondylitis. He stated that appellant should return to light-duty work and should limit lifting, carrying and pushing more than 5 to 10 pounds and should also limit range of motion of the shoulder and elbow. Dr. Huang also recommended that appellant wear a wrist brace and armsling due to the acute aggravation of her symptoms at work.

On March 9, 2000 appellant filed a claim for recurrence beginning December 21, 1999. She stated that since she returned to light-duty work she had increased pain in her elbow,

shoulder and wrist. By decision dated August 22, 2000, appellant's claim for recurrence was denied.

Appellant indicated in an August 22, 2000 personal statement that after six months of light-duty work she returned to full duty. She stated that she worked "window service," which required frequent moving, keying, lifting, pushing, pulling and carrying up to 70 pounds.

Appellant requested reconsideration and submitted additional reports from Dr. Huang dated February 25, July 27 and September 11, 2000. In his February 25, 2000 report, he stated:

"According to the patient, she has been well and doing her daily activities and job duties as a U.S. Postal worker since that time, although she states she still has off and on pain over the neck and also the back area. She admits the pain had been tolerable until about December 1999. Subsequently and due either to the heavy load of her job or the more frequent use of the right upper extremities, that off and on pain has been aggravated worsening."

Dr. Huang diagnosed appellant with cervical sprain and shoulder sprain with rotator cuff impingement. In his July 27 and September 11, 2000 reports, he indicated that appellant continued to have persistent aching pain and limited range of motion of the right shoulder.

By decision dated November 30, 2000, the Office denied appellant's request for modification of the August 22, 2000 decision.

In a December 20, 2000 report, Dr. Huang noted that appellant had shoulder pain at the time of her original injury. He stated:

"On reviewing her medical record, as stated on May 15, 1998, page one, the patient did develop more aching and pain along her right elbow, with aching and pain around the right shoulder area. On physical examination, on the same report, there was pain and aching over the coracoid process, anterior and superior aspects of her shoulder and the posterior aspect of the shoulder, along the supraspinatus muscle area. The patient did have a work-related injury initially over her elbow region and then subsequently in May 1998. Shoulder impingement, strain and sprain were noted. It is my opinion that the patient's condition is work related as indicated on her previous report."

By letter dated June 9, 2001, appellant requested reconsideration. She reiterated that she returned to full-duty work after six months and noted that her employing establishment was aware of her ongoing restrictions.¹

By decision dated August 15, 2001, the Office denied appellant's request for modification of the previous decision. Appellant requested a review of the written record on August 29, 2001 which the Office denied on September 26, 2001.

¹ Appellant also filed a second claim for recurrence beginning August 8, 2000.

The Board finds that appellant has established a recurrence of disability as of December 21, 1999.

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.²

In this case, the Office accepted appellant's claim for right elbow contusion, right elbow strain and right lateral epicondylitis. In her notice of recurrence of disability, appellant stated that she developed pain in her right shoulder since she returned to light-duty work. Dr. Huang diagnosed appellant with shoulder strain and sprain with rotator cuff impingement. It is appellant's burden of proof to show that her accepted right elbow conditions changed or developed into right shoulder impingement by submitting rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale.³

The Board finds that there is insufficient medical evidence in this case to show that appellant's right elbow condition developed into right shoulder impingement. Dr. Huang indicated in his May 15, 1998 report that at the time of appellant's injury there was evidence of pain in the right shoulder area. He later diagnosed appellant with right shoulder impingement and opined that the condition was work related, but did not provide medical rationale to support his conclusions. Even though Dr. Huang noted early on that there was evidence of shoulder pain at the time of the original injury, he did not describe how her accepted condition changed or developed into shoulder impingement by the time of her recurrence. As noted above, appellant's burden includes providing a physician's rationalized medical opinion showing a change in the nature and extent of the injury-related condition.⁴ Appellant did not submit a well-rationalized medical opinion report finding that the accepted elbow condition developed or changed into right shoulder impingement.

The Board does find, however, that appellant has demonstrated a change in the nature and extent of her light-duty job requirements. Appellant stated that after 6 months of working light duty she returned to full-duty work, which required frequent moving, keying, lifting, pushing, pulling and carrying up to 70 pounds.⁵ Appellant's light-duty restrictions included no lifting, carrying, or pushing more than 10 pounds and no key punching or typing. Appellant's attending physician, Dr. Huang, indicated continuously in his reports from 1997 to 2000, that appellant

² *Fallon Bush*, 48 ECAB 594 (1997).

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

⁴ *Supra* note 2.

⁵ It is unclear, but the record seems to indicate that appellant returned to full-duty work on August 7, 1998.

should continue to perform her modified duties. Dr. Huang did not return her to full-duty work. He clearly stated in his December 20, 2000 report: “[Appellant] should not lift, carry, or push more than eight pounds of weights as advised.” There is no other medical evidence of record which indicates that appellant was cleared to return to full-duty work within six months of returning after her injury.⁶ The Board finds that appellant has established a recurrence of disability because she has established a change in the nature and extent of her light-duty job requirements as of December 21, 1999.

The issue of appellant’s request for a review of the written record is moot since the case is reversed.

The September 26 and August 15, 2001 and November 30, 2000 decisions of the Office of Workers’ Compensation Programs are hereby reversed. The case is remanded for further action consistent with this decision.

Dated, Washington, DC
May 14, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ The Board also points to a July 13, 2001 handwritten letter, which indicates that appellant’s agency was not able to provide appellant light-duty work. Although the letter is not a formal declaration on the part of the Office, the Board finds that the letter, coupled with appellant’s statements, lends credence to the notion that appellant returned to full-duty work after six months; *see also Jackie B. Wilson*, 39 ECAB 915 (1988), which states that if the employing establishment determines that it can no longer provide a light-duty position within a claimant’s physical restrictions, then a change in the nature and extent of the light-duty job has been established.