

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

KUMUDBEN S. PARIKH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Schaumburg, IL, Employer**

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**Docket No. 04-578
Issued: April 23, 2004**

Appearances:
Kumudben S. Parikh, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 29, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated January 9, 2003. Pursuant to 20 C.F.R §§ 501(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of disability as of October 26, 2001 causally related to her accepted left trapezius strain, left shoulder subacromial bursitis and left rotator cuff tendinitis conditions.

FACTUAL HISTORY

Appellant, a 31-year-old postal distribution clerk, filed a traumatic injury claim on March 13, 1998, alleging that she injured her left shoulder while pulling mail on February 16, 1998. By decision dated April 29, 1998, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence to establish that her left shoulder strain was causally related to the February 16, 1998 employment incident. By decision dated September 21,

1998, an Office hearing representative, based on a review of the written record, set aside the April 29, 1998 decision and accepted the claim for left trapezius strain. Appellant accepted a light-duty clerk position on October 20, 1998.¹ The Office subsequently expanded her claim to include the conditions of left subacromial bursitis and left rotator cuff tendinitis conditions.

Appellant underwent a left shoulder arthroscopy on March 8, 1999 and returned to light duty on May 3, 1999. Appellant accepted another light-duty job on March 31, 2000 at which she eventually began working a regular eight-hour shift. Appellant stopped working on October 26, 2001.

On January 25, 2002 appellant filed a Form CA-2a, claim for benefits, alleging that she sustained a recurrence of disability on October 26, 2001 causally related to her February 16, 1998 employment injury. Dr. Martin L. Saltzman, a Board-certified orthopedic surgeon, submitted a Form CA-20 dated November 13, 2001 in which he stated appellant had a recurrence of left shoulder pain and diagnosed recurrent left shoulder supraspinatus and rotator cuff tendinitis, which he indicated by checked box was caused or aggravated by her employment activity. Dr. Saltzman also submitted treatment notes dated December 26, 2001 in which he stated:

“[Appellant’s] cervical spine magnetic resonance imaging [MRI] scan was consistent with a bulge at the C5-6 level which is probably the etiology of her left shoulder and neck pain. This does not appear to be primarily a shoulder joint problem, and I did discuss this with her and her husband today that her symptoms are due to a C5-6 bulging disc. I am going to continue her physical therapy for the neck, adding some cervical traction, five [to] seven pounds intermittent. She did have some improvement with the medrol dosepak, and I am going to repeat this again and give her a note to be off of work for two weeks.”

In notes dated January 30, 2002, Dr. Saltzman stated:

“[Appellant] has been followed for some left-sided shoulder and neck pain which, in my opinion, is consistent with a cervical radiculopathy. She has had [an] MRI scan that I believe is consistent with a C5-6 vertebral disc problem. She still continues to be moderately uncomfortable and really cannot sit for any extended period of time; and certainly with the recent job offer that she was given from the [employing establishment], which I believe involved maintenance, she really cannot tolerate that type of activity without risking her symptoms worsening. This is degenerative cervical disc disease, and it is at the most common level of C5-6, and in my opinion is not related to the left shoulder injury she sustained at work several years ago.”

By decision dated February 20, 2002, the Office denied appellant’s claim of a recurrence of disability due to her accepted left shoulder conditions. The Office found that appellant failed

¹ The case file indicates that appellant has periodically worked on light duty since her injury of February 16, 1998.

to submit medical evidence sufficient to establish that the claimed condition or disability as of October 26, 2001 was caused or aggravated by the February 16, 1998 employment injury.

In a report dated February 1, 2002, Dr. Saltzman reiterated his previous findings and conclusions and stated:

“[Appellant] was seen [on] October 29, 2001 with what was felt could possibly be a recurrence of the left shoulder bursitis, but further workup and evaluation in the office has resulted in a diagnosis of cervical disc disease and a cervical radiculopathy.... As I have explained to this patient, it is my impression that she has cervical disc disease at the C5-6 level, and it is also my impression that it is unrelated to her original work injury that occurred in 1998.”

By letter dated March 20, 2002, appellant requested an oral hearing, which was held on October 22, 2002. At the hearing, appellant’s representative submitted a February 7, 2002 letter from the employing establishment which stated that appellant was being assigned to a job as a custodial worker effective January 26, 2002. Appellant also submitted reports dated April 23 and September 23, 2002 from Dr. Kanu Panchal, a Board-certified neurologist, who noted the history of injury, stated findings on examination and noted that an MRI scan of the cervical spine showed a herniated disc at the C5-6 level. Dr. Panchal advised that appellant could return to work at the employing establishment with the restriction of lifting no more than 15 to 20 pounds.

By decision dated January 9, 2003, an Office hearing representative affirmed the February 20, 2002 Office decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.²

ANALYSIS

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant’s injury-related condition. Appellant failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability as of October 26, 2001 to her accepted employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The only medical evidence which appellant submitted consisted of Dr. Saltzman’s treatment notes and February 1, 2001 report and the reports from Dr. Panchal. Dr. Saltzman’s

² *Terry Hedman*, 38 ECAB 222 (1986).

reports provided a history of injury and a diagnosis of her current condition and indicated generally that appellant complained of disabling pain as of October 26, 2001, but did not constitute a probative, rationalized medical opinion sufficient to establish that appellant's disability as of October 26, 2001 was causally related to her accepted February 16, 1998 employment injury.³ Dr. Saltzman, the attending physician, stated that his tests and examination produced a diagnosis of cervical disc disease and a cervical radiculopathy, not a recurrence of the left shoulder bursitis, and opined that this was unrelated to her 1998 work injury. Dr. Panchal stated findings on examination, noted that a cervical MRI scan showed a herniated disc at the C5-6 level and opined that appellant could return to work at the employing establishment with the restriction of lifting no more than 15 to 20 pounds. He did not, however, provide any rationalized, probative medical evidence indicating that appellant sustained a recurrence of disability as of October 26, 2001.

The reports from Drs. Saltzman and Panchal do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. The reports submitted by appellant failed to provide an explanation in support of her claim that she was totally disabled as of October 26, 2001. Thus, these reports did not establish a worsening of appellant's condition, and therefore do not constitute a probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.⁴

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. The record demonstrates that appellant returned to work in May 3, 1999 on light duty. Although appellant stopped working on October 26, 2001, she has submitted no additional factual evidence to support a claim that a change occurred in the nature and extent of her limited-duty assignment during the period claimed. The February 7, 2002 letter from the employing establishment which purported to reassign appellant to a custodial position is not relevant, as this offer was proffered three months after the date appellant claimed she sustained a recurrence of disability while on light duty, and thus could not constitute a change in the nature and extent of her limited-duty assignment. Accordingly, as appellant has not submitted any factual or medical evidence supporting her claim that she was totally disabled from performing her light-duty assignment on October 26, 2001 as a result of her employment, appellant failed to meet her burden of proof. Thus, the Office properly found in its February 20, 2002 decision that appellant was not entitled to compensation based on a recurrence of her employment-related disability.

As there is no medical evidence addressing and explaining why the claimed condition and disability as of October 26, 2001 was caused or aggravated by her employment injury,

³ The November 13, 2001 Form CA-20 from Dr. Saltzman which supported causal relationship with a checkmark is insufficient to establish the claim, as the Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

⁴ *William C. Thomas*, 45 ECAB 591 (1994).

appellant has not met her burden of proof in establishing that she sustained a recurrence of disability. The Board therefore affirms the January 9, 2003 Office decision affirming the February 20, 2002 denial of compensation based on a recurrence of her work-related disability.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of October 26, 2001 causally related to her accepted left trapezius strain, left shoulder subacromial bursitis and left rotator cuff tendinitis conditions.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member