

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

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**SHELLEY HILL, Appellant**

**and**

**U.S. POSTAL SERVICE, SOUTH EUCLID  
BRANCH, Cleveland, OH, Employer**

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**Docket No. 04-1829  
Issued: December 13, 2004**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On July 13, 2004 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated April 30, 2004, finding that she had not established a recurrence of disability on January 25, 2003 causally related to her accepted employment injuries. Pursuant to 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 met her burden of proof in establishing a recurrence of disability on January 25, 2003 causally related to her accepted employment injuries.

**FACTUAL HISTORY**

On January 6, 1996 appellant, then a 21-year-old mail clerk, filed a traumatic injury claim alleging that a large piece of ice fell from a gutter and landed on the back of her neck. She claimed injury to her left shoulder and neck. The Office accepted the claim for neck and shoulder contusions on May 31, 1996.

Appellant sustained an additional injury on May 1, 1996 when a postal customer assaulted her while she was in the performance of her duties. The Office accepted this claim on May 28, 1996 for left shoulder strain and anxiety.

By decision dated February 7, 1997, the Office reduced appellant's compensation benefits based on her wage-earning capacity as a full-time modified carrier. She sustained a recurrence of disability on March 16, 1997. Appellant returned to light-duty work on July 31, 1997. She returned to full duty on September 1, 1997. By decision dated September 5, 1997, the Office granted appellant a schedule award for 35 percent permanent impairment of her left upper extremity.

Appellant filed a notice of traumatic injury alleging that on February 29, 2000 she developed right wrist pain and swelling. The Office accepted that appellant sustained a right wrist strain. She returned to fully duty on December 1, 2000.<sup>1</sup> Appellant filed a notice of traumatic injury on December 11, 2000 alleging on December 8, 2000 she injured her left shoulder when she slipped while in the performance of duty. The Office accepted this claim for left shoulder strain on January 29, 2001. Appellant returned to limited duty on January 8, 2001. On May 24, 2001 the Office accepted that she had sustained a right shoulder strain as a result of a March 5, 2001 recurrence of disability caused by a functional capacity evaluation.

Appellant returned to work eight hours a day with restrictions on July 25, 2001. She sustained an additional injury on October 29, 2001 which the Office accepted for bilateral wrist sprain. Appellant's attending physician, Dr. Curtis W. Smith, an orthopedic surgeon, completed a form report on December 19, 2001 and indicated that she could work eight hours a day with no casing mail, no carrying mail and no repetitive motions of her shoulders. He maintained these restrictions through March 20, 2002. Beginning that date, Dr. Smith added the additional restriction of a chair with back support. Appellant did not work from September 13 to 18, 2002. On December 18, 2002 Dr. Smith listed her work restrictions as working eight hours a day with no casing mail, no letter carrying, a chair with back support and that appellant be allowed up to two hours of computer work during an eight-hour work shift.

Dr. Smith completed a note on January 15, 2003 stating that appellant had provided him with a picture of her work area and chair. He found that the chair provided no upper back support. Dr. Smith noted that appellant complained of pain. He stated that examination of her shoulders, upper and midback was unchanged. Dr. Smith stated that appellant had pain with motion with diffuse tenderness. He diagnosed contusion of both of her shoulders and back, sprain of both hands and wrists, bilateral shoulder sprain and left shoulder sprain with anxiety reaction. Dr. Smith completed a duty status report on January 15, 2003 and diagnosed sprained shoulder and contusion upper back. He indicated that appellant could not perform her regular work and listed her restrictions as no casing mail, no letter carrying, no repetitive motions of either shoulder, eight-hours work shift only and avoid work vehicles with sliding doors.

Dr. Smith completed a duty status report on January 22, 2003 and listed his findings as pain, weakness and loss of motion. He diagnosed sprain of both shoulders and upper back. Dr. Smith indicated that appellant could not perform her regular work and listed her restrictions

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<sup>1</sup> Appellant has also filed a claim for an occupational disease affecting both of her feet.

as no casing mail, no letter carrying, no repetitive motions of left shoulder, a six-hour work shift and that she be allowed up to two hours of computer work per shift.

In a report dated February 2, 2003, Dr. B. Stringer, a general practitioner, diagnosed post-traumatic stress disorder and suggested that appellant work from 7:00 a.m. to 3:30 p.m. in order to improve her mental as well as her physical health.

Dr. Smith submitted a note dated February 19, 2003 and stated that examination of appellant's upper back and shoulders was unchanged. He noted that she was waiting for the Office to approve a chair with upper back support. Dr. Smith completed a duty status report on February 19, 2003 repeating his earlier findings and diagnoses. He listed appellant's restrictions as no casing mail, no letter carrying, no repetitive motion of either shoulder, a six-hour work shift only and avoidance of work vehicles with sliding doors.

In a note dated April 16, 2003, Dr. Smith stated that appellant was on restricted duty and continued to have daily and persistent pain. He again stated that examination of her shoulders was unchanged with limited active range of motion with pain at the extremes.

On March 26, 2003 appellant completed a claim for compensation and requested wage-loss compensation from January 25 to March 4, 2003 as she had worked only six hours a day during this period.<sup>2</sup> In a letter dated May 1, 2003, the Office informed appellant that if she was claiming a recurrence of disability, she must submit additional factual and medical evidence in support of her claim.

By decision dated April 6, 2004, the Office denied appellant's claim for a recurrence of disability on or after January 25, 2003 on the ground that there was no rationalized medical evidence establishing that she was unable to perform her light-duty position.

Appellant, through her attorney, requested an oral hearing on April 28, 2004. She testified at the oral hearing on January 27, 2004 that she worked six hours a day in accordance with Dr. Smith's January 22, 2003 note. She stated that her work hours were reduced due to the type of chair provided by the employing establishment. Appellant further testified that she stopped work entirely in March 2003 due to a foot injury.

Appellant submitted a report from Dr. Smith dated January 14, 2004 addressing her increased disability beginning January 22, 2003. He noted that on January 15, 2003 appellant provided him with a photograph of her work site, including her chair. Dr. Smith requested that she receive a chair with upper back support. He stated that appellant's condition changed on January 22, 2003 as not only did she complain of pain and weakness, but also loss of motion in

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<sup>2</sup> Under a separate claim file, appellant sustained an additional injury on March 6, 2003 which the Office accepted for coccyx contusion, left foot strain and left ankle strain as well as lumbar strain and lumbar contusion. Appellant stopped work on March 6, 2003 and returned to work on March 8, 2003. She began working four hours a day on August 7, 2003 and continues to receive compensation benefits and medical treatment due to these injuries.

both arms. Dr. Smith stated that this was a new symptom complex which differed from her prior evaluation. He stated:

“In summary [appellant] has a long term industrial injury involving multiple areas of her upper body. In review of her chart, it is clear that her conditions persist and the change in their intensity over time. During the time frame reference, this patient was shifted from an eight[-]hour workday to a six[-]hour workday because of increasing symptoms noted while at work.”

By decision dated April 30, 2004, the hearing representative affirmed the Office’s April 6, 2004 decision finding that there was no rationalized medical evidence establishing that appellant was unable to perform her light-duty position eight hours a day.<sup>3</sup>

### **LEGAL PRECEDENT**

The Office’s procedure manual states that claimants who are performing light duty are not considered fully recovered from their work-related injuries and that, therefore, the claimant’s burden of proof is to establish that any increase in disability for work is due to the accepted injury, rather than another cause. The Office further states that an increase in pain does not constitute objective evidence of disability.<sup>4</sup> The Board addressed this principle in *Terry S. Hedman*,<sup>5</sup> stating:

“When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden of establish[ing] by the weight of the reliable, probative and substantial evidence ... that she cannot perform such light[-]duty work. 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 limited-duty job requirements.”<sup>6</sup>

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. The burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is

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<sup>3</sup> Appellant filed claims for additional periods of disability from April 25, 2001 through February 27, 2003. By decision dated April 6, 2004, the Office denied these claims. Appellant, through her attorney, requested an oral hearing on this decision on April 28, 2004. The Branch of Hearings and Review has not issued a decision on this claim. As this aspect of appellant’s claim is in an interlocutory state, the Board will not address this issue on appeal. 20 C.F.R. § 501.2(c).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7.a(1), (May 1997).

<sup>5</sup> *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>6</sup> *See Joseph D. Duncan*, 54 ECAB \_\_\_ (Docket No. 02-1115, issued March 4, 2003).

causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.<sup>7</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>8</sup>

As part of an employee's burden of proof, he or she must present rationalized medical opinion evidence based on a complete factual and medical background, establishing causal relation between the disability for work and the accepted employment injury. The question of whether there is a causal relationship is medical in nature and generally can be established only by medical evidence. This medical opinion must be based upon a complete factual and medical background with an accurate history of appellant's employment injury. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### ANALYSIS

Appellant sustained several employment-related injuries resulting in disability. She returned to work eight hours a day with restrictions in December 2001. On March 26, 2003 appellant submitted a claim for compensation and requested wage-loss compensation for two hours a day from January 25 to March 4, 2003. The record establishes that she worked six rather than eight hours a day during this period.

In support of her claim, appellant submitted a series of reports from Dr. Smith, an orthopedic surgeon. On January 15, 2002 he reported appellant's complaints of pain, examined a photograph of her work area and recommended that she obtain a chair with upper back support. Dr. Smith completed a duty status report on that date and indicated that appellant could continue to work eight hours a day with restrictions. He found that she had pain with motion with diffuse tenderness and diagnosed sprained shoulder and contusion of the upper back. This report does not support a recurrence of disability as Dr. Smith found that appellant could perform the duties of her limited-duty position for eight hours a day.

On January 22 and February 19, 2003 Dr. Smith restricted appellant to six hours of work a day. He noted pain and included an additional finding of loss of motion and diagnosed sprain of both shoulders and upper back. Dr. Smith did not provide an opinion regarding the causal relationship of the findings of upper back sprain and loss of range of motion to appellant's accepted employment injuries. As his report does not explain this relationship or support his

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<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

<sup>8</sup> *Id.*

<sup>9</sup> *James Mack*, 43 ECAB 321, 328-29 (1991).

findings with adequate medical reasoning, it is not sufficient to establish a recurrence of disability.

Dr. Stringer, a general practitioner, indicated on February 2, 2003 that appellant could work eight hours a day with restrictions. His report is not relevant to whether she sustained a recurrence of disability on or after January 25, 2003. Dr. Stringer addressed post-traumatic stress disorder, a condition which has not been accepted by the Office as related to appellant's accepted injuries.

In his January 14, 2004 report, Dr. Smith reviewed his January 15 and 22, 2003 notes. He stated that appellant's condition changed on January 22, 2003 as she noted increasing symptoms while at work and experienced a loss of motion in both arms, a new symptom complex. Dr. Smith stated that these changes required a reduction in her work hours. While this report attributed appellant's increased disability to her accepted employment injuries, Dr. Smith did not provide adequate medical rationale to explain how or why appellant's long standing shoulder injuries resulted in a loss of motion. As his report does not contain the necessary medical reasoning, it is insufficient to meet appellant's burden of proof.

### **CONCLUSION**

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence to establish an increase in disability on January 25, 2003 such that she was no longer able to perform her limited-duty position for eight hours a day. Therefore, she has not established a recurrence of partial disability and the Office properly denied her claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 30, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member