



performance of duty. The record reflects that appellant was first treated on November 4, 1999 by Dr. James O'Brien, a family practitioner, who recorded that appellant had pulled a tray of mail out of a truck with her right hand and arm on November 3, 1999 when she felt a pop and immediately experienced parathesia and tingling going from hand to arm. He described that the tingling got worse and appellant felt as if her hand was asleep. Dr. O'Brien reported negative Tinel's sign and negative Phalen's test. The diagnosis was right wrist strain with parathesia. Appellant was told to work limited duty with restrictions from November 4 until December 6, 1999, when she was released to full duty. The Office accepted the clam for a right wrist strain and paid appropriate compensation.

On March 15, 2000 appellant filed a claim for a recurrence of disability beginning February 22, 2000. She described that she awoke with a stiff neck on February 22, 2002 but still reported to work, where she later developed pain in the neck and arm. Appellant alleged that she suffered from two disc herniations due to her original work injury of November 3, 1999. She indicated that she had felt an electric shock go through her arm and neck when she pulled the tray on November 3, 1999. Appellant stated that she kept telling Dr. O'Brien that her whole arm hurt but he had failed to check her neck. She has not worked since February 22, 2000. Appellant submitted copies of a magnetic resonance imaging (MRI) scan dated March 9, 2000, which confirmed cervical disc herniations at C4-5 and C5-6.<sup>2</sup> Treatment notes signed by a physician's assistant indicate that appellant was treated for thoracic and right arm pain on February 24, 2000.

In a March 30, 2000 report, Dr. David Petruska, a Board-certified neurologist, noted that appellant had presented to him with complaints of right arm pain. He stated that appellant was "erroneously diagnosed and has always had a cervical disc herniation at the C5-6 level. Dr. Petruska described that appellant stopped work on February 22, 2000 when she could no longer stand the pain and was referred to his office. He opined that her "overall injury is related to a work-related process." In a June 14, 2000 letter, Dr. Petruska stated that appellant's medical records spoke for themselves and reiterated that appellant's neck pain was due to her work injury.

In a decision dated July 17, 2000, the Office denied appellant's clam for a recurrence of disability on the grounds that the evidence of record failed to establish a causal relationship between appellant's disability due to her cervical disc condition and the November 3, 1999 work injury. Appellant subsequently requested a hearing, which was held on April 26, 2001.

Appellant submitted additional reports from Dr. Petruska dated November 16 and 19, 2000. He elaborated on appellant's history of medical treatment following her work injury of November 3, 1999 and specifically opined that when appellant reached for the tray at work that day she either exacerbated or produced a cervical disc herniation at the C5-6 level.

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<sup>2</sup> On March 7, 2000 the employing establishment controverted the claim, stating that appellant had called in sick to work on January 22, 2000 because she fell in her garage and hurt her back.

In a November 21, 2000 report, Dr. Ronald J. Hamm, a family practitioner, stated that he had seen appellant on February 24, 2000 for severe neck and arm pain. Appellant related to him that she had pulled a 30-pound tray at work on November 3, 1999 and felt an acute electrical sensation in her right arm and wrist. She described that she was treated for a right wrist sprain and released to full duty on December 6, 1999, although she still experienced right hand pain and arm tingling. Dr. Hamm stated that appellant also experienced neck and upper body stiffness, but did not relate it to her original injury at that time. He noted that she received chiropractic care without relief. Dr. Hamm described physical findings made on February 24, 2000 and stated that he referred her to physical therapy and for an MRI scan. When the MRI scan results demonstrated a cervical disc herniation, Dr. Hamm referred appellant to Dr. Petruska for neurological evaluation. Dr. Hamm concluded that appellant's neck injury was consistent with the related work injury that occurred on November 3, 1999.

By decision dated August 27, 2001, an Office hearing representative vacated the Office's July 17, 2000 decision and remanded the case for further medical development. The Office hearing representative found that appellant had submitted sufficient evidence to raise an inference that her cervical condition was either caused, aggravated or exacerbated by the work injury of November 3, 1999.

On remand, the Office referred appellant for a second opinion evaluation with Dr. Robert Keisler, a Board-certified orthopedic surgeon. In a report dated October 8, 2001, Dr. Keisler reviewed a statement of accepted facts and the medical record. He recorded physical findings and reviewed the results of appellant's MRI scan and referenced x-rays taken in conjunction with his examination. He noted that appellant developed acute parathesis in the right upper extremity in 1999 and agreed that appellant had been misdiagnosed with a right wrist strain. Dr. Keisler diagnosed that appellant suffered from a bilateral cervical rib condition that was congenital in nature. He further diagnosed multiple level degenerative disc disease of the cervical spine with possible cervical outlet syndrome and chronic pain syndrome. Dr. Keisler specifically noted that appellant's work activities of pushing, pulling or lifting did not cause any of the diagnosed conditions, but that such activities could exacerbate symptoms related either to the cervical spine or cervical outlet compression. He concluded that appellant's cervical conditions were not the result of the November 3, 1999 work injury. Dr. Keisler also stated that there was no evidence of acute herniation that could have occurred in 1999 since the potential pathology of the degenerative process was on the left while appellant's symptoms were on the right.

In a January 4, 2002 decision, the Office again denied appellant's claim for a recurrence of disability, finding that the weight of the medical evidence resided with the opinion of Dr. Keisler.

On May 16, 2002 appellant requested reconsideration and submitted additional evidence including an April 1, 2002 report from Dr. Petruska, who stated as follows: "I believe that [appellant's] right arm symptomatology was consistent with a C5-6 cervical disc problem which I believe was related to a work-related injury. I believe her initial diagnosis of a primary shoulder problem was confused with a cervical disc herniation." By letter dated July 12, 2002, the Office provided Dr. Petruska with a copy of a statement of accepted facts along with a copy of Dr. Keisler's report and asked him to provide a rationalized medical opinion addressing the

issue of causal relationship between appellant's cervical disc condition and the November 3, 1999 work injury. The Office specifically asked Dr. Petruska to explain how appellant was able to carry on her regular work duties from December 6, 1999 through February 21, 2000. Dr. Petruska, however, did not respond to the Office's request for an additional medical report. Therefore, on August 20, 2002, the Office denied modification of its prior decision.

In a June 6, 2003 letter, appellant requested reconsideration and submitted a November 19, 2000 report from Dr. James Patrick Murphy, wherein the physician noted that appellant was first seen on August 31, 2000 for neck pain.<sup>3</sup> He related appellant's description of the November 3, 1999 work injury. He stated that in his opinion when appellant reached for the tray at work she either exacerbated or produced an acute injury to her cervical spine with structural damage confirmed by the MRI scan results. Dr. Murphy indicated that appellant had undergone epidural injections for pain with some benefit. He noted that "the disc protrusions and facet joint abnormalities placed pressure on nerves in such a way as to transmit pain impulses through [appellant's] entire arm. Since the injury occurred in your cervical spine, it is not surprising that [she] also developed neck pain as a significant component of [her] overall condition."

In a decision dated August 21, 2003, the Office denied modification of its prior decisions.

### **LEGAL PRECEDENT**

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 the reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.<sup>4</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.<sup>5</sup>

### **ANALYSIS**

In this case, the Board finds that a conflict exists in the record between Dr. Keisler and Dr. Murphy, appellant's treating physician, as to the nature of appellant's cervical condition and whether or not that condition is causally related to her original work injury of November 3, 1999 such that appellant would be entitled to compensation for a recurrence of disability. Drs. Petruska, Hamm and Murphy have stated that appellant's original work injury was misdiagnosed as involving only a right wrist strain and feels the pulling incident of November 3, 1999 caused appellant to sustain a cervical disc herniation confirmed by an MRI scan. In

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<sup>3</sup> Appellant also submitted a copy of medical article pertaining to the nature of a prolapsed disc, and copies of reports from Dr. Petruska dated February 1, and October 11, 2002, which reiterated his opinion that appellant's cervical disc herniation was due to the November 3, 1999 work injury.

<sup>4</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>5</sup> *Id.*

contrast, Dr. Keisler, an Office referral physician, stated that appellant's cervical problems were due to a congenital abnormality and degenerative cervical disc disease confirmed by x-ray taken in conjunction with his examination. Dr. Keisler specifically concluded that pushing and pulling could not cause appellant's cervical symptoms due to the large cervical rib or degenerative cervical disc disease, which typically involved parathesia and tingling sensations of the arms. He discounted that appellant suffered a disc herniation in 1999, noting that appellant's pathology was on the left while her symptoms were oriented to the right.<sup>6</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>7</sup> On remand, the Board directs the Office to obtain an impartial medical evaluation from a qualified Board-certified physician to address the conflict in the record as to the nature of appellant's cervical condition and whether or not it is causally related to the pulling incident of November 3, 1999. After such further medical development as the Office deems necessary, the Office shall issue a *de novo* decision.

### CONCLUSION

The Board finds that this case is not in posture for a decision since a conflict exists in the record as to whether appellant sustained a recurrence of disability due to a cervical condition on or after February 22, 2000, which was causally related to her accepted work injury.

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<sup>6</sup> The Board notes that the MRI scan listed a right paracentral disc herniation and finds Dr. Keisler's report to be insufficiently reasoned with respect to the origin of appellant's right-sided symptoms.

<sup>7</sup> 5 U.S.C. § 8123(a); see *Charles S. Hamilton*, 52 ECAB 110 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 21, 2003 is vacated and the case is remanded for further consideration consistent with this opinion.

Issued: January 7, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

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