

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

HELENA STRAUGHTER, Appellant

and

**U.S. POSTAL SERVICE, CIVIC CENTER
STATION, Oakland, CA, Employer**

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**Docket No. 04-557
Issued: July 21, 2004**

Appearances:
Helena Straughter, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 10, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated October 6, 2003 which denied her recurrence of disability claim for the period July 26 to September 2, 2002. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this recurrence case.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability for the period July 26 to September 9, 2002, causally related to her accepted employment injury.

FACTUAL HISTORY

On August 16, 2000 appellant, a 50-year-old clerk, filed a traumatic injury claim alleging that working the mail aggravated her left hand, arm and shoulder injury.¹ The Office accepted the claim for left cervical strain.

On August 13, 2002 the employing establishment offered appellant a temporary limited-duty position as a modified full-time sales and service associate, which appellant rejected on August 20, 2002.

On September 6, 2002 appellant filed a claim for a recurrence of disability for the period July 26 through September 9, 2002. She alleged that she was forced to work beyond her medical restrictions. In support of her claim, appellant submitted progress notes dated September 16, October 8 and November 13, 2002, an industrial injury visit verification, treatment notes for the period August 30 through September 13, 2002 and a physical therapy referral/treatment plan.

By letter dated October 31, 2002, the Office advised appellant of the medical and factual evidence required to establish her claim for a recurrence of disability, explaining that she had the burden to submit a reasoned medical opinion addressing why she was disabled for the period alleged and how that disability was causally related to the August 16, 2000 work injury.

By decision dated December 3, 2002, the Office denied appellant's claim for a recurrence of disability.

Subsequent to the December 3, 2002 decision, the Office received a November 25, 2002 report by Dr. Leslie A. Oshita, an attending Board-certified internist and occupational medicine physician, an October 11, 2000 work status report, a January 3, 2003 physical therapy referral/treatment plan, industrial injury visit verification slips and progress notes dated December 3 and 16, 2002 and January 6, February 3, March 13 and 31 and April 29, 2003.

On November 25, 2002 Dr. Oshita diagnosed trapezius strain and history of herniated disc at C6-7. The physician concluded that appellant's duties of repetitive reaching and lifting were the cause of her current symptoms. Dr. Oshita indicated that it was likely that appellant's "work station ergonomics had a role, especially if she repetitively has to turn her neck" and noted that "[t]he narrowing at the left C6-7 level of the cervical spine by the MRI [magnetic resonance imaging] indicates a predisposition to nerve root irritation, causing pain and parasthesias in the left arm and hand."

In a letter dated December 30, 2002, appellant requested a review of the written record. By decision dated May 22, 2003, the hearing representative affirmed the denial of appellant's recurrence claim. The hearing representative found that the medical evidence of record was insufficient to support a causal relationship between appellant's claimed recurrence and her August 16, 2000 employment injury. She noted that the medical evidence suggested that factors

¹ At the time of this injury appellant had accepted a limited-duty job offer which was effective August 16, 2000 and expired on August 23, 2000. The restrictions of the position as limited-duty clerk included no lifting more than 15 pounds, no reaching above the shoulder and no using the left hand.

of appellant's employment such as lifting and repetitive reaching contributed or caused the subsequently diagnosed conditions of trapezius strain and herniated cervical disc.

In a letter dated August 4, 2003, appellant requested reconsideration. By merit decision dated October 6, 2003, the Office denied modification of the May 22, 2003 decision.

LEGAL PRECEDENT

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.³ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.⁴ This burden 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.⁵

ANALYSIS

In the instant case, the Office accepted appellant's claim for left cervical strain. At the time of the injury appellant had accepted a limited-duty job offer which was effective August 16, 2000 and ended on August 23, 2000. Appellant, however, has not submitted rationalized medical evidence establishing that her condition for the period July 26 to September 2, 2002 was causally related to the accepted left cervical strain. She submitted progress notes dated September 16, October 8, November 13 and December 3 and 16, 2002 and January 6, February 3, March 13 and 31 and April 29, 2003, industrial injury visit verification slip, treatment notes for the period August 30 through September 13, 2002 and a physical therapy referral/treatment plan. The medical evidence of record submitted with the recurrence of disability claim documents appellant's treatment for her trapezius strain and herniated disc at C6-7. Such evidence, however, does not relate the diagnosed conditions to the accepted left cervical strain. In a November 25, 2002 report, Dr. Oshita, an attending Board-certified internist and occupational medicine physician, concluded that appellant's duties of repetitive reaching and lifting were the cause of her symptoms and that her "narrowing at the left [C]6-7 level of the cervical spin by the MRI indicates a predisposition to nerve root irritation." This does not

² 20 C.F.R. § 10.5(x) (2002).

³ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁴ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁵ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

implicate a spontaneous change in appellant's accepted condition. Dr. Oshita did not submitted a rationalized medical opinion relating the trapezius strain and herniated disc at C6-7 to the original injury of August 16, 2000 accepted for a left cervical strain. His report is insufficient to establish that appellant's recurrence of disability was causally related to the accepted condition.⁶

The record contains no rationalized medical opinion on the cause of appellant's condition or disability to support appellant's belief that her condition for the period July 26 to September 2, 2002, stemmed from the left cervical strains. Therefore, the medical evidence submitted in support of the recurrence of disability claim is insufficient to meet appellant's burden of proof.⁷

CONCLUSION

The Board finds that appellant has not established that her recurrence of disability for the period July 26, to September 9, 2002, is causally related to her accepted August 16, 2000 employment injury.

⁶ See *Calvin E. King*, 51 ECAB 394, 400 (2000) (form reports from a physician who checked a "yes" box indicating a causal relationship between appellant's spinal stenosis and his employment had little probative value absent supporting rationale and was insufficient to establish causation).

⁷ See *Carmen Gould*, 50 ECAB 504, 508 (1999) (finding that a physician's opinion that failed to explain the relationship between appellant's current back condition and the accepted lumbar sprain was insufficient to establish causation and thus failed to meet appellant's burden of proof).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 6 and May 22, 2003 and December 30, 2002 are affirmed.

Issued: July 21, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member