

patient in a clinotron bed. The Office accepted the claim for a right shoulder strain. Appellant stopped work on September 30, 2001.

The Office referred appellant to a staff nurse to help in returning her to work on December 21, 2001. She returned to full-time limited duty on January 22, 2002.

In a January 30, 2002 letter, the Office notified appellant that her wage-loss compensation benefits would be reduced to zero if she continued failing to cooperate with vocational rehabilitation.

In a decision dated March 27, 2002, the Office reduced appellant's compensation to zero for failing to participate in vocational rehabilitation services.

On April 17, 2002 appellant requested reconsideration of the March 27, 2002 decision. In a May 9, 2002 decision, the Office denied appellant's request for reconsideration.

On August 8, 2002 appellant filed a claim for a recurrence of disability beginning July 17, 2002 and submitted additional evidence.

In a May 16, 2002 report, Dr. Syed J. Akhtar-Zaidi, an attending Board-certified physiatrist, noted appellant's right upper extremity range of motion for abduction and flexion was 70 degrees.

Dr. Akhtar-Zaidi, based upon objective findings, noted appellant's right upper shoulder range of motion with abduction was 100 degrees in a May 24, 2002 report.

In a July 14, 2002 report, Dr. Akhtar-Zaidi diagnosed right shoulder strain and reflex sympathetic dystrophy of the right upper extremity. He concluded that the reflex sympathetic dystrophy was "directly caused by the injury" appellant sustained at work. Dr. Akhtar-Zaidi noted appellant had "quite a bit of tenderness and significant limitation in the ROM [range of motion] of the right shoulder." Regarding appellant's ability to work, Dr. Akhtar-Zaidi opined that appellant was incapable of returning to her date-of-injury position as well as the modified position due to appellant's "dominant hand and arm being of very little use at present."

In an August 6, 2002 report, Dr. Akhtar-Zaidi opined:

"[S]train injury has given her moderate to severe symptoms which do spread beyond the shoulder into the arm and cause extreme pain, especially upon movements of that shoulder area. Some of the symptoms are consistent with early reflex sympathetic dystrophy (RSD) type symptoms which do occur after this type of injury."

He further noted:

"[T]he injury that she sustained at work, though it was a shoulder strain, but has resulted in symptoms which are possibly the result of over activity of the sympathetic nervous system, and is causing most of the symptoms rather than actual strain injury. However, this cannot be separated from her shoulder injury."

Dr. Akhtar-Zaidi reported physical findings of “moderate to severe tenderness in the right shoulder and hypersensitivity in the shoulder and the upper arm as well as forearm on that side,” right shoulder range of motion was 10 to 15 degrees flexion and abduction which caused pain, poor hand grip strength and elbow is kept in the flexed position due to pain.

By decision dated November 26, 2002, the Office denied appellant’s recurrence claim on the basis that the evidence failed to establish a worsening of her condition.¹

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 reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, 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

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.³ 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.⁴

ANALYSIS

Appellant has not established a change in the nature and extent of her injury-related condition or of the light-duty requirements. The record shows that appellant most recently returned to light-duty work on or about January 22, 2002. The record does not establish nor did appellant allege that the claimed recurrence of total disability was caused by a change in the nature or extent of her light-duty job requirements.

Appellant has submitted medical evidence in support of her claim that her accepted right shoulder condition materially changed or worsened since she returned to work. The medical evidence submitted by appellant consists of reports dated May 16 and 24, July 14 and August 6,

¹ The Board notes that appellant submitted additional medical evidence to the Office subsequent to its November 26, 2002 decision. The Board cannot consider this evidence submitted after the Office’s decision, as its review is limited to the evidence, which was before the Office at the time of its final decision; *Dennis E. Maddy*, 47 ECAB 259 (1995). Appellant may resubmit this evidence to the Office with a request for reconsideration; *see* 20 C.F.R. §§ 10.605-10.610.

² *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁴ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

2002 by Dr. Akhtar-Zaidi who reported range of motion in appellant's right upper extremity was 70 degrees for abduction and flexion. In his May 24, 2002 report, the physician noted appellant had improved her range of motion with abduction to 100 degrees. In his July 14, 2002 report, Dr. Akhtar-Zaidi diagnosed right shoulder strain and reflex sympathetic dystrophy of the right upper extremity, which he attributed to appellant's employment injury. He opined that appellant was totally disabled as her right hand and arm were "of very little use at present." In his August 6, 2002 report, Dr. Akhtar-Zaidi reported that appellant's right shoulder strain had spread beyond her shoulder into her arm causing "extreme pain." He noted appellant's range of motion in her right shoulder was 10 to 15 degrees of flexion.

The Board finds that the evidence submitted by appellant is sufficient to require further development of the record.⁵ Although the medical evidence submitted by appellant is not sufficient to meet her burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant's September 29, 2001 employment injury and her alleged July 17, 2002 recurrence of disability and is sufficient to require further development of the case record by the Office.

On remand the Office should develop the medical evidence by referring her to an appropriate Board-certified specialist to submit a rationalized medical opinion on whether she sustained a recurrence of disability on July 17, 2002 due her September 29, 2001 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that this case is not in posture for a decision.

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 26, 2002 is hereby set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: May 6, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member