

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

PATTI S. WONG, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Merrifield, VA, Employer**

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**Docket No. 04-1547
Issued: November 12, 2004**

Appearances:
Stephen D. Scavuzzo, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 25, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 1, 2004 in which an Office hearing representative denied her recurrence of disability claim. 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 met her burden of proof to establish that she sustained a recurrence of disability on December 12, 2002 causally related to her June 5, 2002 employment injury. Appellant contends that the Office hearing representative ignored the evidence from Dr. Young J. You, a Board-certified orthopedic surgeon, and erroneously found that she may have grounds for a new claim based on another injury or new exposure.

FACTUAL HISTORY

On June 5, 2002 appellant, then a 51-year-old part-time flexible (PTF) distribution clerk, filed an occupational injury claim alleging that her right shoulder conditions were caused by her

federal employment duties of pushing heavy equipment, continuous grasping, lifting and carrying of parcels, tubs and trays filled with mail. She indicated that she was first aware of her condition on August 17, 2000 and realized that her condition was caused or aggravated by her employment on April 18, 2002. The employing establishment indicated that appellant initially stopped work on August 23, 2000 and had worked intermittently in a limited-duty position since August 30, 2000.

On October 1, 2002 the Office accepted the claim for the condition of tendinitis of the right shoulder. The Office advised that appellant would be sent out for a second opinion examination to determine whether her other medical conditions, which included brachial plexitis, bursitis of the right shoulder, tenosynovitis of both elbows, tenosynovitis of right wrist and fracture of the first cervical vertebra, were causally related to her employment.

In an October 28, 2002 report, Dr. Robert A. Smith, a Board-certified orthopedic surgeon and second opinion physician, diagnosed a history of shoulder tendinitis, resolved and a preexisting, unrelated cervical/thoracic deformity. Dr. Smith advised that the examination was basically normal and a review of the imagining studies did not show any significant findings which could be specifically related to her job activities. Based on his examination and review of the records, Dr. Smith stated that there were no specific findings to suggest any ongoing plexitis, tendinitis or bursitis tendinitis of the right shoulder. He further noted that there was no evidence of a fracture of the first cervical vertebra, which was a remnant of a preexisting condition unrelated to this incident. He opined that the accepted condition had resolved and that appellant could immediately return to full-duty work as a distribution clerk. He further opined that there was no evidence that appellant required any specific restrictions. Although Dr. Smith noted that there were significant medical problems which could account for some of appellant's symptoms, which included deformity of the upper cervical spine and scoliosis of the thoracic spine, he opined that those problems would not affect her ability to work as a distribution clerk.

On January 4, 2003 appellant filed a CA-7 claim for compensation for the period April 26 through June 27, 2002. The employing establishment indicated that appellant had worked eight hours per day limited duty for the period June 28 through December 2, 2002, she had stopped work completely December 2 through 26, 2002, and returned to work on December 27, 2002 working four hours limited duty a day.

On January 13, 2003 appellant filed a claim alleging that she sustained a recurrence of disability on December 2, 2002. She indicated that she had stopped work from December 2 through 26, 2002. Appellant stated that the ongoing pain in her right shoulder, arm and hand due to tendinitis had not resolved. In a December 18, 2002 CA-17 form, Dr. Toon Lee, a general practitioner, diagnosed right shoulder tendinitis and bursitis and provided restrictions under which appellant could perform for four hours per day.

On January 14, 2003 appellant accepted a part-time limited-duty assignment.

By letter dated February 6, 2003, the Office advised appellant about the type of factual and medical evidence she needed to submit to establish her recurrence claim. Appellant failed to provide any additional evidence regarding her injury.

By decision dated April 17, 2003, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on December 2, 2002 causally related to her April 18, 2002 employment injury.¹

In a May 16, 2003 letter, appellant, through her attorney, requested an oral hearing. Duplicative copies of evidence already of record were received along with medical reports from Dr. You dated March 13, April 14, May 5 and 29, June 26 and July 31, 2003. In his March 13, 2002 report, Dr. You noted a slight atrophy of the right shoulder girdle musculature and limited range of motion in all directions. The x-rays showed some degenerative changes of the subacromial space with small calcified density of the rotator cuff. Dr. You diagnosed advanced, severe, adhesive capsulitis of the right shoulder with some degree of calcified rotator cuff tendinitis. In his May 5, 2003 report, Dr. You advised that appellant's adhesive capsulitis was the cause of her recent pain and stiffness. He noted that, two years prior, appellant had sustained a right shoulder injury at work and was diagnosed as having tendinitis in the right shoulder. He advised that appellant's current adhesive capsulitis was the result from chronic rotator cuff tendinitis of the right shoulder and was not a result of a new injury or symptoms.

A hearing was held on December 2, 2003. By decision dated March 1, 2004, an Office hearing representative affirmed the April 21, 2003 decision denying the recurrence claim.

LEGAL PRECEDENT

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 to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-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.²

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.³

ANALYSIS

The record reflects that appellant was working full-time limited duties from August 2002 until she stopped working on December 2, 2002. When she returned to work at the end of December 2002, she worked part-time limited duties with restrictions. Appellant's recurrence claim concerns the period December 2 through 26, 2002.

¹ The Office incorrectly noted the date of appellant's recurrence of disability as December 12, 2002.

² *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *James H. Botts*, 50 ECAB 265 (1999).

The evidence does not reflect, and appellant does not contend, that the work stoppage of December 2, 2002 occurred because of a change in the nature or extent of her limited-duty job requirements.

Additionally, appellant has submitted no medical opinion evidence establishing that the injury she sustained on June 5, 2002 worsened to the point that she could no longer perform the full-time limited-duty work that she had successfully performed prior to December 2, 2002. As previously noted, appellant returned to full-time limited duties in August 2002. On October 28, 2002 Dr. Smith, a Board-certified orthopedic surgeon and second opinion physician, opined that the examination of her right shoulder was essentially normal and that the accepted tendinitis condition had resolved. He related an accurate factual and medical history. He also provided a well-reasoned opinion why appellant's accepted tendinitis condition had resolved based on normal examination findings and the review of imaging studies which failed to show anything which could be related to her job duties. He further explained that appellant's significant preexisting medical problems could account for some of her symptoms. Thus, Dr. Smith found no basis on which to attribute employment-related disability on October 28, 2002.

In March 2003, approximately four months later, Dr. You examined appellant. Although Dr. You opined that appellant had developed tendinitis and adhesive capsulitis, his reports do not establish that she suffered from any employment-related condition or was unable to continue to perform her full-time limited-duty job assignment in December 2002 due to her accepted employment injury. In his May 5, 2003 report, Dr. You opined that appellant's current adhesive capsulitis was the result from the chronic rotator cuff tendinitis of the right shoulder. However, he failed to explain how appellant's prior tendinitis from her June 5, 2002 employment injury would develop into the current adhesive capsulitis or provide an opinion on the cause of her advanced, severe, adhesive capsulitis.⁴ Moreover, Dr. You provided no opinion or comments on appellant's disability from work beginning December 2002, the claimed period. Accordingly, the medical opinion evidence from Dr. You is insufficient to establish that appellant sustained a recurrence of disability in December 2002 causally related to her June 5, 2002 employment injury.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability or a medical condition beginning December 2, 2002 causally related to her June 5, 2002 employment injury.

⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2004 decision of the Office of Worker' Compensation Programs is affirmed.

Issued: November 12, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member