



degenerative disc disease; and (3) whether she sustained injury to her right shoulder on July 17, 2003.

### **FACTUAL HISTORY -- ISSUE 1**

On April 5, 2003 appellant, then a 50-year-old clerk, filed a traumatic injury claim alleging that on March 29, 2003 she was stamping nixie mail and experienced pain in her head. She stopped work on that date. The employing establishment controverted appellant's claim, noting that she complained of pain when she arrived at work. The employing establishment also noted that she sustained injury on August 31, 2000, accepted for a cervical and low back strains; an aggravation of cervical degenerative disc disease on January 14, 2003, and that she had filed a recurrence of disability claim on March 29, 2003.

By letter dated April 23, 2003, the Office advised appellant that the information received was insufficient to support her claim. It requested that she submit medical evidence explaining how her injury resulted from her federal employment. In response, appellant submitted a certificate for return to work which stated "no work from March 29 until May 5, 2003." The signature on the form is not legible. Appellant also submitted an April 10, 2003 physical therapy prescription for a neck sprain and left elbow pain, physical therapy reports, and a statement describing the onset of her head pain. Thereafter she submitted a May 6, 2003 certificate, indicating that she was unable to return to work until further notice. The record also contains a May 5, 2003 partially completed Form CA-17 duty status report with an illegible signature. It noted a diagnosis of muscle strain, clinical findings of decreased range of motion, and indicated that appellant was advised not to return to work. On May 20, 2003 appellant was found able to return to work.

By decision dated May 29, 2003, the Office denied appellant's claim, finding that the medical evidence was not sufficient to establish a traumatic injury on March 29, 2003, as alleged.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit sufficient medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

The term “physician” is defined under section 8101(2), as follows: “‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.”<sup>7</sup> Physical therapists are not physicians under the Act, therefore, their reports do not constitute competent medical evidence in support of a claim.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

In this case, it has been accepted that appellant was stamping nixie mail on March 29, 2003. However, the Board finds that she submitted insufficient medical evidence to establish that the employment incident caused a head injury. Appellant provided notes indicating that physical therapy was prescribed and the notes of physical therapy reports. As noted, a physical therapist is not a “physician” as defined under the Act. Therefore, these reports do not constitute competent medical evidence in support of her claim. The certificates addressing disability and prescribing physical therapy contain illegible signatures, such that the identity of the treating physician cannot be determined. Therefore, the Board finds these documents are of diminished probative value in establishing appellant’s claim of injury. Appellant has not established that she sustained a head injury resulting from the March 29, 2003 incident, as alleged.

### **FACTUAL HISTORY -- ISSUE 2**

On March 29, 2003 appellant submitted a recurrence claim alleging that on and after March 29, 2003 she sustained a recurrence of disability, causally related to a August 31, 2000 claim accepted for cervical strain, lumbar strain and aggravation of cervical degenerative disc disease. The record reflects that as of December 3, 2001, appellant worked full time in a modified limited-duty position following the 2001 injury. On that date, she filed a claim for recurrence of disability alleging that a worsening of her work injury prohibited her from working October 30 to December 3, 2001.

By decision dated January 29, 2002, the Office denied appellant’s recurrence of disability claim for the period October 30 to December 3, 2001, finding that the medical evidence of record

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<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.* For a definition of the term “traumatic injury,” see 20 C.F.R. § 10.5(ee).

<sup>7</sup> 5 U.S.C. § 8101(2).

<sup>8</sup> *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

failed to establish her disability was causally related to the August 31, 2000 injury to her cervical and lumbar spine. The Office found that appellant had not established a change in the nature and extent of her injury-related condition or a change in the nature and extent of her light-duty job requirements.

On February 14, 2002 appellant filed a request for reconsideration.

Thereafter, the case record was referred to Dr. David I. Krohn, an Office medical adviser, for an opinion on the issue of appellant's disability for work commencing October 30, 2001. On June 15, 2002 Dr. Krohn negated a causal relationship between appellant's diagnosed degenerative changes of the cervical spine, including spinal stenosis, disc herniation and foraminal stenosis, and the 2001 cervical strain injury. He opined that none of appellant's current medical conditions or disability was related to the August 31, 2000 employment injury, and that the medical evidence of record did not support that there was a recurrence of total disability commencing October 30, 2001.

On August 7, 2002 Dr. Robert J. Kisiel, Jr., a Board-certified orthopedic surgeon, provided a second opinion evaluation on whether appellant's disability starting October 30, 2001 was the result of her work-related injury of August 31, 2000. The Office requested that he address whether the claim should be expanded to include any additional medical condition and whether she was disabled from performing her light-duty position. Dr. Kisiel reviewed her treatment history, provided his examination results, and noted that there were bulging discs at C3-4 and C5-6 but no disc herniations. He noted a diagnosis of cervical spine sprain with bulging discs without evidence of a definite radiculopathy and opined that "there appears to be a relationship between the lifting episode at work and [appellant's] back, left shoulder and left arm pain." A work capacity evaluation was provided.

The Office determined that Dr. Kisiel's report did not fully respond to the questions presented and requested clarification. When the August 28, 2002 clarifying report was not sufficient to answer the Office questions, the Office referred appellant to Dr. Marc A. Linson a Board-certified orthopedic surgeon, with a new statement of accepted facts.

On December 3, 2002 Dr. Linson opined that the August 31, 2000 injury represented a strain to the cervical and lumbar spine with an exacerbation of preexisting degenerative and discogenic pain sources in the neck and low back regions. He noted that there were no objective findings, and that appellant's ongoing condition was due to degeneration and stenosis of the spine. Dr. Linson opined that her claim should be expanded to include exacerbation of preexisting degenerative changes of the cervical spine and lumbar spine. He noted, though, that these were small factors and small contributing elements to her ongoing difficulties, but that the medical evidence did support that she had an exacerbation on October 30, 2001 for a little over a month, more as a function of her preexisting degenerative condition with her spine than from the effect of the August 2000 work injury. Dr. Linson completed a work capacity evaluation indicating that appellant could work eight hours per day with limitations only on reaching and operating a motor vehicle, which were limited to two hours per day.

By decision dated January 14, 2003, the Office accepted that appellant sustained an aggravation of cervical degenerative disc disease, causally related to her August 31, 2000 employment injury. The Office found that Dr. Linson's report constituted the weight of the medical opinion evidence but that appellant had not demonstrated a change in the nature and extent of her injury-related conditions or in the light-duty job requirements. The recurrence of disability claim was denied.

Following her March 29, 2003 recurrence claim, appellant received an April 23, 2003 letter from the Office advising her that the evidence submitted was insufficient to establish her recurrence claim. The Office requested a statement of why she believed that the recurrence was causally related to her August 31, 2000 injury, a description of her outside activities and any intervening injuries in or out of work, and a report from her physician explaining causal relation between the conditions diagnosed and the August 31, 2000 employment injuries.

Nothing further was received from appellant.

By decision dated July 1, 2003, the Office rejected appellant's recurrence claim finding that neither the factual nor medical evidence established that her alleged recurrence of disability was causally related to the August 31, 2000 employment injuries or to her subsequently accepted employment-related conditions.

### **LEGAL PRECEDENT -- ISSUE 2**

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. 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 light-duty job requirements.<sup>9</sup>

As used in the Act,<sup>10</sup> the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>11</sup> The claimant has the burden of proof to establish by the weight of the substantial, reliable, and probative medical evidence that the changes identified caused disability for work. 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 employee is disabled for work due to the change in

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<sup>9</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>10</sup> 5 U.S.C. §§ 8101-8193.

<sup>11</sup> *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f). (Disability is not synonymous with physical impairment. An employee who has a physical impairment but who has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to disability compensation.) See *Gary L. Loser*, 38 ECAB 673 (1987).

the nature and extent of his or her job duty requirements or injury-related medical conditions.<sup>12</sup> Causal relationship is a medical issue and can be established only by rationalized medical evidence.<sup>13</sup> Rationalized medical evidence concludes that the disabling condition is causally related to the employment injury or to the changes in the nature and extent of the light-duty job requirements, and supports that conclusion with sound medical rationale.<sup>14</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>15</sup>

The weight of a physician's medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of his or her knowledge of the facts and history of the case, the care of analysis manifested, and the medical rationale expressed in support of the opinion.<sup>16</sup> The opinion must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background.<sup>17</sup>

### ANALYSIS -- ISSUE 2

Appellant has not submitted any rationalized medical evidence establishing that she sustained a recurrence of disability on October 30, 2001 or March 29, 2003, causally related to her August 31, 2000 employment injury or to any accepted employment-related conditions. The Board finds that she has not submitted evidence to establish that there was a change in the nature and extent of her injury-related conditions or a change in the nature and extent of her light-duty job requirements.

On December 3, 2002 Dr. Linson opined that the August 31, 2000 injury represented a strain to the cervical and lumbar spine and an exacerbation of preexisting degenerative and discogenic pain sources in the neck and back area. He noted that there were no objective findings, that most of appellant's ongoing trouble was due to degeneration and stenosis of the spine, that her claim should be expanded to include exacerbation of preexisting degenerative change of the cervical spine and lumbar spine. He noted, though, that these were small factors and small contributing elements to her ongoing trouble, but that the medical evidence did support that she had an exacerbation on October 30, 2001 for a little over a month, more as a function of her preexisting degenerative condition with her spine than the affect of the August 2000 work injury. Dr. Linson completed a work capacity evaluation indicating that appellant had no change in her disability status, as she could work eight hours per day with limitations only on reaching and operating a motor vehicle, which were limited to two hours per day. He did, however,

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<sup>12</sup> *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

<sup>13</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>14</sup> *Mary S. Brock*, 40 ECAB 461 (1989); *Nicolea Bruso*, 33 ECAB 1138 (1982).

<sup>15</sup> *Michael Stockert*, 39 ECAB 1186 (1988).

<sup>16</sup> *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>17</sup> *Connie Johns*, 44 ECAB 560 (1993).

identify small changes in the nature and extent of appellant's preexisting medical conditions, sufficient to constitute an exacerbation of her preexisting medical condition for the period October 30, 2001 until November 30, 2001.

The Office determined that Dr. Linson's reports constituted the weight of the medical evidence and established that appellant did not have a recurrence of disability, but that she did sustain an aggravation of her preexisting degenerative disc disease.

Following her March 29, 2003 recurrence claim, appellant received an April 23, 2003 letter from the Office advising her that the evidence submitted was insufficient to establish her recurrence of disability claim. The Office requested a statement of why she believed that she sustained a recurrence of disability causally related to her August 31, 2000 injury, a description of her outside activities and any intervening injuries in or out of work, and a report from her physician explaining causal relation between the conditions diagnosed and the August 31, 2000 employment injuries.

As nothing further was received from appellant, by decision dated July 1, 2003 the Office rejected appellant's recurrence of disability claim finding that neither the factual nor the medical evidence established that she sustained a recurrence of disability on October 30, 2001, or on March 29, 2003, causally related to the August 31, 2000 employment injuries or to her subsequently accepted employment-related condition of aggravation of degenerative joint disease. The Office further found that appellant did not establish that on October 30, 2001 or on March 29, 2003 she experienced a change in the nature and extent of her injury-related conditions or a change in the nature and extent of her limited-duty job requirements which caused disability at that time.

The Board finds that the report of Dr. Linson constitutes the weight of the medical opinion evidence of record, as it is the only medical evidence of record that was thorough and well rationalized, based upon a proper factual and medical background and a complete examination of appellant, and is responsive to the Office's questions. The Board notes that Dr. Linson opined that appellant did not have a recurrence of disability for work, but that she sustained a temporary exacerbation of preexisting degenerative change in the cervical and lumbar spines, partially related to her accepted conditions of cervical muscular strain, lumbar muscular strain and aggravation of cervical degenerative disc disease injuries. Dr. Linson specifically found that appellant had no change in her disability status and could work eight hours per day with limitations only on reaching and operating a motor vehicle, which were limited to two hours per day. The Board notes that this opinion clearly negated any disability due to appellant's October 30, 2001 recurrence of disability claim.

In support of her March 29, 2003 recurrence of disability claim, appellant did not submit any supporting factual or medical evidence. As it was her burden of proof to establish disability due either to a change in the nature and extent of her injury-related conditions or a change in the nature and extent of her light-duty job requirements, and as she submitted no evidence whatsoever in support of her recurrence claim, she has failed to meet her burden of proof to establish any March 29, 2003 recurrence of disability.

### **FACTUAL HISTORY -- ISSUE 3**

On July 17, 2003 appellant filed a traumatic injury claim alleging that on that date as she was casing letters and felt tightness and then pain, burning and spasm in her right arm, neck and shoulder, as she lifted a tub of mail. Appellant stopped work on that date and did not return. On July 24, 2003 she alleged that on July 17, 2003 she sustained a new injury at the employing establishment which affected her right shoulder.

Appellant submitted illegibly signed medical evidence which diagnosed rotator cuff strain versus radiculopathy as a direct result of a work-related event. Also submitted was a statement in which she further described how her injury occurred, noting that she felt the pain while raising her arm and shoulder to case mail and while pulling down mail and lifting tubs.

A medical form report dated July 17, 2003 was submitted with an illegible signature and diagnosed shoulder strain versus radicular pain. Another illegibly signed medical report referred appellant to a sports medicine clinic for acute right shoulder pain.

On July 18, 2003 the employing establishment controverted the claim, noting that the weight of mail tubs appellant had to lift was no more than one pound.

On an August 4, 2003 attending physician's report with an illegible signature, the physician noted as history that appellant was working when she began to have shoulder pain, and he checked "yes" to the question of whether it was caused or aggravated by an employment activity. Diagnosis was noted as "unclear." The form also noted that appellant had cervical disease as a preexisting and concurrent condition, but contribution was not indicated.

By letter dated August 15, 2003, the Office advised appellant that further information was needed to establish her claim. It requested a more detailed description of her alleged injury and the implicated employment activity, and a medical report containing a rationalized medical opinion supporting causal relation. Appellant responded that she was casing letters for about 30 minutes when the tightness began, that she stopped that activity and began another, pulling flats from a case, and her symptoms got worse. Appellant noted that the pain stopped when she stopped work. She claimed that she had had no similar symptoms to her shoulder and that her accepted conditions were to her neck and low back.

An August 26, 2003 report from Dr. David A. Bowers, a physician specializing in physical medicine and rehabilitation, noted that appellant was seen for a new problem; her neck pain had improved, but that her right shoulder pain had resulted from reaching maneuvers. He noted mild tenderness over the subacromial area and over the superior aspect of the shoulder, and mild discomfort with maximal external and internal rotation, but no impingement. Dr. Bowers noted that appellant was unable to perform liftoff testing on the right, but noted that reflexes and strength were equal and excellent, without sensory deficit to light touch. He diagnosed rotator cuff tendinitis.

The September 10, 2003 report from Dr. Garry Bombardier, a Board-certified internist, reviewed her history on July 17, 2003 of shoulder and arm pain. He noted that, upon

examination, appellant showed some tenderness in the shoulder, decreased strength due to pain but no other obvious abnormalities, reflex losses or warmth to touch. Dr. Bombardier indicated that appellant's symptomatology was inconsistent with the kind of activity she was performing. He stated that she had radicular pain related to an old cervical problem. He thereafter changed his diagnosis from neck pain to shoulder pain as her symptoms improved, and he recommended her return to light duty. Dr. Bombardier diagnosed shoulder pain, "muscular versus neurologic," and opined that it was difficult to imagine that there was a significant rotator cuff tear.

On September 16, 2003 Dr. Bombardier completed a duty status report limiting time for performance of various activities and avoiding repetitive activities with her right arm.

By decision dated September 26, 2003, the Office denied appellant's claim of traumatic injury on July 17, 2003 finding that the medical evidence was not sufficient to establish her claim.

### **LEGAL PRECEDENT -- ISSUE 3**

An employee seeking benefits under the Act<sup>18</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>19</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>20</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>21</sup> Second, the employee must submit sufficient medical evidence, to establish that the employment incident caused a personal injury.

### **ANALYSIS -- ISSUE 3**

It has been accepted that appellant experienced the July 17, 2003 employment incident at the time, place and in the manner alleged. The Board finds, however, that she has not submitted sufficient medical evidence to establish that her right shoulder was injured that date while she was casing mail.

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<sup>18</sup> 5 U.S.C. §§ 8101-8193.

<sup>19</sup> *Joe D. Cameron, supra note 3; Elaine Pendleton, supra note 3.*

<sup>20</sup> *Victor J. Woodhams, supra note 4; Delores C. Ellyet, supra note 4.*

<sup>21</sup> *John J. Carlone, supra note 5.*

Appellant submitted several form medical reports in which the signature is illegible and the identity of the physician cannot be determined. These reports are of diminished probative value and this evidence is insufficient to support her claim.

An August 26, 2003 report from Dr. Bowers reported appellant's current symptomatology but did not provide a rationalized medical opinion on the issue of causal relation of appellant's right shoulder condition to casing mail on July 17, 2003. He stated that appellant's right shoulder pain resulted from "reaching maneuvers," but he did not provide any further discussion to explain his opinion. Dr. Bowers also diagnosed rotator cuff tendinitis but he did not provide medical rationale to address how this condition was caused or aggravated by appellant's duties at work on that date. Accordingly, his report is of diminished probative value and is insufficient to establish appellant's traumatic injury claim.

Dr. Bombardier provided a September 10, 2003 report which noted the July 17, 2003 history of shoulder and arm pain. He stated that appellant demonstrated tenderness upon palpation and decreased strength due to pain. No other abnormalities were found. He indicated that appellant's symptomatology was inconsistent with the kind of activity she was performing, and he suggested that it was radicular pain related to her cervical condition. In subsequent reports, however, he changed the diagnosis from neck pain to right shoulder pain and recommended a return to light duty. Dr. Bombardier opined that a significant rotator cuff tear was difficult to imagine. His opinion on causal relationship is of diminished probative value as it does not provide a firm diagnosis of appellant's claimed right shoulder condition. Moreover, he did not provide a rationalized explanation of how appellant's neck or shoulder discomfort was related to the mail casing activities she performed on July 17, 2003. In fact, he indicated that her symptomatology was inconsistent with the kind of activity she was performing. The Board finds that the reports of Dr. Bombardier are insufficient to establish her traumatic injury claim.

### **CONCLUSION**

The Board finds that appellant has not submitted sufficient rationalized medical evidence to support a traumatic injury to her head on March 29, 2003, recurrences of disability on October 30, 2001 or March 29, 2003, or a July 17, 2003 right shoulder injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 26, July 1 and May 29, 2003 be affirmed.

Issued: August 18, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board