



Appellant filed a recurrence of disability on September 9, 2003 alleging a recurrence of disability on August 10, 2003 due to her January 24, 2002 employment injury. By decision dated November 21, 2003, the Office accepted her claim for cervical radiculopathy and also accepted her claimed recurrence of August 10, 2003. Appellant returned to limited work on September 19, 2003.

Appellant's attending physician, Dr. Daniel Reinharth, a Board-certified internist, continued to support her work restrictions of lifting up to 15 pounds intermittently, standing intermittently for 4 hours a day, walking intermittently for 2 hours a day and no lifting above the shoulder through August 16, 2004.

On August 16, 2004 Dr. Reinharth noted that appellant had undergone right carpal tunnel surgery with improvement in her hand pain.

In a note dated September 14, 2004, Dr. Alan M. Freedman, a Board-certified plastic surgeon, stated that he performed a carpal tunnel release five weeks earlier and that appellant had regained complete sensation in her fingertips. He also noted that she had persistent pain descending from her neck into her arm and forearm which he suggested was due to her known compression in her neck and a separate issue.

Appellant filed a notice of recurrence of disability on September 15, 2004 and alleged that she sustained a recurrence of total disability on January 8, 2004 due to her January 29, 2001 employment injury. She indicated that she stopped work on July 22, 2004 and stated that she began to experience pain from her neck down her right arm and into her hand. Appellant alleged carpal tunnel syndrome and right arm pain. The employing establishment noted that she was in limited-duty status at the time she filed her recurrence.

In a note dated September 20, 2004, Dr. Reinharth reported that appellant continued to experience pain and burning in her arms, hands, neck and back. He stated that her hand surgery opined that she had "double crush" injury to her cervical spine with radiculitis. Dr. Reinharth diagnosed chronic pain syndrome with neck and back muscle spasms, carpal tunnel syndrome and radiculitis.

Appellant submitted a magnetic resonance imaging (MRI) scan dated October 1, 2004, which demonstrated an interval increase in the asymmetric right paracentral C3-4 annulus bulge with effacement of the right ventral cord and no other changes.

Dr. Reinharth reported on October 6, 2004 that appellant was disabled due to pain in her hands, arms, neck and back. He diagnosed cervical radiculitis, neck and back muscle spasms and complex regional pain syndrome. Dr. Reinharth completed a form report on October 7, 2004 and indicated that appellant was totally disabled. He noted that her condition was stable on November 2, 2004.

In a form report dated November 22, 2004, Dr. Reinharth diagnosed cervical radiculitis and indicated with a checkmark "yes" that this condition was caused or aggravated by appellant's employment activities of bending and lifting. His note dated December 2, 2004 included the additional diagnosis of reflex sympathetic dystrophy.

By letter dated December 28, 2004, the Office requested additional factual and medical evidence and allowed 30 days for a response. On January 5, 2005 Dr. Reinharth stated that appellant's neck, back and arm pain had gradually worsened such that she was unable to work after July 22, 2004. He provided his findings on physical examination and his diagnoses of cervical radiculitis, muscle spasm, carpal tunnel syndrome and complex regional pain syndrome. Dr. Reinharth stated that appellant was unable to work due to severe pain and limited range of motion.

By decision dated February 1, 2005, the Office denied appellant's claim, finding that Dr. Reinharth's reports were not sufficient to establish a change in the nature and extent of her employment injury or a change in her light-duty job requirements.<sup>1</sup>

### **LEGAL PRECEDENT**

When an employee who is disabled from the job he 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.<sup>2</sup>

### **ANALYSIS**

Appellant alleged that she sustained a recurrence of total disability on January 8, 2004 but did not stop work until July 22, 2004. Reports from her attending physician, Dr. Reinharth, a Board-certified internist, continue to indicate that appellant could perform limited-duty work until August 16, 2004. There is no medical evidence contradicting these reports. Therefore, appellant has not established that she sustained a recurrence of total disability due to a change in the nature and extent of her employment-related condition before August 16, 2004.

There is no medical evidence supporting appellant's total disability for work until Dr. Reinharth's October 6, 2004 report diagnosed cervical radiculitis, neck and back muscle spasms and complex regional pain syndrome. He did not offer any explanation for why he believed that she was unable to work and did not attribute appellant's total disability to a change in the nature and extent of her injury-related condition in this report.

On November 22, 2004 Dr. Reinharth completed a form report diagnosing cervical radiculitis and indicating with a checkmark "yes" that appellant's condition was caused or aggravated by her employment, including job requirements of bending and lifting. This report

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<sup>1</sup> Following the Office's February 1, 2005 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

<sup>2</sup> *Joseph D. Duncan*, 54 ECAB \_\_\_\_ (Docket No. 02-1115, issued March 4, 2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

does not describe a change in the nature and extent of appellant's employment-related condition and does not offer any medical reasoning in support of Dr. Reinharth's finding of total disability. The Board finds that this report is not sufficient to meet appellant's burden of proof.

In his January 5, 2005 report, Dr. Reinharth stated that appellant's pain had gradually worsened such that she was no longer able to work after July 22, 2004. While this report does support a change in the nature and extent of her symptoms, he did not explain how appellant's employment-related condition had changed to result in her increased symptom of pain and this report cannot establish a change in the nature and extent of appellant's employment-related condition.

Appellant has not submitted the necessary medical evidence to establish that she sustained a change in the nature and extent of her injury-related condition such that she was rendered totally disabled on or after July 22, 2004. She has also failed to submit any factual evidence supporting that her light-duty job requirements changed on or after July 22, 2004, such that she was unable to meet the requirements. As appellant returned to limited-duty work on September 19, 2003 and has neither established a change in the nature and extent of her injury-related condition, nor a change in her light-duty job requirements, the Board finds that she has failed to meet her burden of proof in establishing a recurrence of total disability on or after July 22, 2004.

#### **CONCLUSION**

The Board finds that appellant has not submitted the necessary factual and medical evidence to meet her burden of proof in establishing a recurrence of total disability on or after July 22, 2004.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board