

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

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LILLIAN WOLFE, Appellant )  
and ) Docket No. 05-1717  
U.S. POSTAL SERVICE, CHURCH STREET ) Issued: December 5, 2005  
STATION, New York, NY, Employer )  
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*Appearances:*  
Paul Kalker, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge

**JURISDICTION**

On August 12, 2005 appellant filed a timely appeal from a May 20, 2005 decision of the Office of Workers' Compensation Programs affirming a previous denial of her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established that she sustained a recurrence of disability from December 2 to 13, 2003 causally related to an accepted May 1, 1995 neck injury. On appeal, appellant contends that the Office failed to properly develop the medical evidence.

## **FACTUAL HISTORY**

The Office accepted that, on May 1, 1995, appellant, then a 42-year-old letter sorter and keyboard operator, sustained an aggravation of cervical radiculitis in the performance of duty.<sup>1</sup> Appellant returned to work in a light-duty position in late 1995. She remained on light duty through 2001.<sup>2</sup> As of November 3, 2001, appellant worked in a light-duty position as a modified distribution clerk, casing mail and verifying letters. She was restricted from lifting more than three pounds, pushing, pulling, climbing and reaching.

Appellant received ongoing treatment for cervical radiculopathy and right upper extremity complaints from July 1995 through 2002. Dr. Raghava R. Polavarapu, an attending Board-certified orthopedic surgeon, submitted reports from September 27 to December 17, 2002 renewing appellant's November 3, 2001 work restrictions. He held appellant off work intermittently from January 14 through July 24, 2003 due to cervical radiculopathy and tenosynovitis of the right wrist and hand, which he attributed to the accepted condition.<sup>3</sup> Appellant was off work from June 14 to October 5, 2003.<sup>4</sup>

In a September 27, 2003 report, Dr. Polavarapu opined that appellant could no longer case mail and verify letters. In reports through late December 2003, Dr. Polavarapu noted work limitations of no pushing, pulling, no bending the neck, no reaching above shoulder level or lifting more than three pounds. He held appellant off work from November 29 through late December 2003 due to cervical radiculopathy and tenosynovitis of the right hand. The Office accepted that appellant sustained a recurrence of disability on November 28, 2003.

On January 5, 2004 appellant filed a notice alleging a recurrence of disability commencing December 2, 2003 due to moving her right arm during daily activities and to pulling herself up stairs on trains and buses while commuting to and from work. She was off work from December 3 to 13, 2003 and returned to limited duty on December 14, 2003.<sup>5</sup>

In a January 27, 2004 letter, the Office advised appellant of the type of additional evidence needed to establish her claim for recurrence of disability. The Office noted that

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<sup>1</sup> June 7, 1995 cervical x-rays showed mild spurring from C4-6. An August 22, 1995 magnetic resonance imaging (MRI) scan showed mild degeneration at C5-6, a small posterior disc bulge at C4-5 and C5-6 with minimal compression of the thecal sac and small osteophytes projecting into the right neural foramen at C5-6.

<sup>2</sup> June 11 and 28, 2001 cervical x-rays showed marked degenerative osteoarthritis with osteophyte formation from C4 to C7, disc space narrowing C4-5 and C5-6. September 5, 2001 electromyogram (EMG) and nerve conduction velocity (NCV) studies of the upper extremities showed cervical radiculopathy on the right at C6.

<sup>3</sup> A March 29, 2003 cervical MRI scan reviewed by Dr. Richard H. Patt, a Board-certified radiologist, showed "degenerative disc disease at C5-6 with spondyloarthropathy resulting in bilateral neuroforaminal encroachment and mild impression on the cervical cord."

<sup>4</sup> On February 14, 2003 appellant filed a notice claiming a recurrence of disability commencing January 14, 2003 due to handling mail at work. There is no final decision of record regarding this claim.

<sup>5</sup> On February 5, 2004 appellant filed a notice alleging that she sustained a recurrence of disability commencing January 17, 2004 when she pulled "something in [her] arm" while ascending stairs in a train station while on her way home from work. There is no final decision of record regarding this claim.

appellant must submit a rationalized report from her attending physician explaining the findings demonstrating an objective worsening of the accepted condition such that she could no longer perform her light-duty position. In response, appellant submitted additional evidence.

In a December 20, 2003 duty status report, Dr. Polavarapu released appellant to part-time, light-duty work, with no climbing, kneeling, bending, stooping, twisting, pulling, pushing, fine manipulation, reaching above the shoulder, keyboarding, driving or operating machinery. He limited lifting to two pounds. Appellant accepted a limited-duty position on December 20, 2003, with restrictions against pushing, pulling, bending her neck, reaching above shoulder level or lifting more than three pounds.

In a January 31 and February 21, 2004 reports, Dr. Polavarapu held appellant off work from January 18, 2004 onward due to acute cervical radiculopathy and tenosynovitis of the right wrist and hand. He opined that appellant sustained a recurrence of cervical radiculopathy beginning in November 2003. Appellant remained off work from January 18 to October 20, 2004.

Dr. Barbara Schuh, an attending Board-certified internist, submitted a February 12, 2004 slip holding appellant off work from January 11 to 13, 2004.

In February 25, 2004 letters, Gregg Wilson, one of appellant's coworkers and a union steward, stated that, on an unspecified date, appellant's right hand was swollen and she requested "something else to do" as boxing and verifying mail were painful for her.

By decision dated April 14, 2004, the Office denied appellant's claim for a recurrence of disability commencing December 2, 2003 on the grounds that she submitted insufficient evidence to establish a change either in the nature and extent of the accepted condition or in her light-duty job requirements such that she could no longer perform the position. The Office found that Dr. Polavarapu's November 29 and December 20, 2003 reports did not mention the claimed December 2, 2003 recurrence of disability or how her "condition ha[d] worsened to the point that [she] could no longer perform the duties of [her] modified job."

In a March 16, 2005 letter, appellant requested reconsideration. She asserted that the Office conducted itself in an adversarial manner by refusing to accept several upper extremity conditions and failing to develop the medical evidence. Appellant also asserted that she had continuing residuals of the accepted condition. She submitted additional evidence.

In a July 3, 2004 decision, the Social Security Administration found appellant disabled for work as of April 1, 2003.

In reports from May 22 to October 23, 2004, Dr. Polavarapu found appellant totally disabled for work due to cervical radiculopathy and tenosynovitis of the right wrist and hand caused by the May 26, 1995 injury.

In a February 26, 2005 report, Dr. Polavarapu noted that appellant sustained recurrences of disability on January 14, 2003 "while handling mail at [work]" and on January 17, 2004. He also stated that the May 1, 1995 injury was a "competent producing cause for the injury and disability sustained on January 14, 2003" and January 17, 2004. Dr. Polavarapu opined that the

“effects of [the accepted] injury gradually worsened over time due to the physical wear and tear in her job.<sup>6</sup>

By decision dated May 20, 2005, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant such modification. The Office found that appellant’s arguments were either repetitious or concerned issues not in dispute. The Office further found that Dr. Polavarapu did not provide medical rationale explaining how and why appellant’s condition as of December 2, 2003 was causally related to the accepted May 1, 1995 aggravation of cervical radiculitis.

### **LEGAL PRECEDENT**

As used in the Federal Employees’ Compensation Act,<sup>7</sup> the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>8</sup> A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.<sup>9</sup> If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.<sup>10</sup>

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 establishes that the employee can perform the light-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 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>11</sup> This 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.<sup>12</sup> An award of

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<sup>6</sup> The record contains an April 14, 2005 decision approving an attorney’s fee in the amount of \$6,525.00 for services rendered from November 17, 2004 to March 16, 2005. Appellant had approved the fee in a March 16, 2005 letter. As appellant did not appeal the April 14, 2005 decision, the Board will not address it on the present appeal.

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB \_\_ (Docket No. 03-205, issued June 19, 2003).

<sup>10</sup> *Id.*

<sup>11</sup> *Albert C. Brown*, 52 ECAB 152 (2000); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>12</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); see *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.<sup>13</sup>

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.<sup>14</sup> Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.<sup>15</sup>

### ANALYSIS

The Office accepted that appellant sustained an aggravation of cervical radiculitis. On January 5, 2004 appellant filed a claim for a recurrence of disability from December 2 to 13, 2003 which commenced while she was on light duty. She attributed the recrudescence of her symptoms to the accepted condition, a right arm strain while commuting and to unspecified body movements. In order to prevail, appellant must demonstrate either a change in the nature and extent of the accepted aggravation of cervical radiculitis or in her light-duty job requirements.<sup>16</sup> In this case, appellant asserts a worsening of the accepted condition such that she was totally disabled for work from December 2 to 13, 2003.

In support of her claim, appellant submitted reports from Dr. Polavarapu, an attending Board-certified orthopedic surgeon, who did not mention a December 2, 2003 recurrence of disability. He opined in a September 27, 2003 report that appellant could no longer case mail and verify letters, elements of her light-duty position. However, he did not opine that there was any change in appellant's condition as of December 2, 2003. Dr. Polavarapu also noted a November 2003 recurrence of disability, disabling appellant for work from an unspecified date in November through December 19, 2003. He did not attribute appellant's disability for work in December 2003 to a December 2, 2003 recurrence of disability. In a February 26, 2005 report, Dr. Polavarapu also noted recurrences of disability on January 14, 2003 and January 17, 2004. However, he did not assert that appellant sustained a recurrence of disability commencing December 2, 2003. As Dr. Polavarapu did not provide medical rationale explaining how and why the accepted aggravation of cervical radiculopathy would cause a total disability for work on and after December 2, 2003, his opinion is of insufficient probative value to establish the claimed causal relationship.<sup>17</sup>

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<sup>13</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>14</sup> *Conard Hightower*, 54 ECAB \_\_\_\_ (Docket No. 02-1568, issued September 9, 2003).

<sup>15</sup> *Albert C. Brown*, *supra* note 11.

<sup>16</sup> *Albert C. Brown*, *supra* note 11; *Terry R. Hedman*, *supra* note 11.

<sup>17</sup> *Beverly A. Spencer*, 55 ECAB \_\_\_\_ (Docket No. 03-2033, issued May 3, 2004).

The February 12, 2004 slip from Dr. Schuh, an attending internist, and the February 25, 2004 letters from Gregg Wilson, one of appellant's coworkers, do not address the period December 2 to 13, 2003. These documents are irrelevant to appellant's claim.

Appellant also submitted a July 3, 2004 decision from the Social Security Administration finding her totally disabled as of April 1, 2003. However, the findings of other administrative agencies are not determinative of her disability under the Federal Employees' Compensation Act.<sup>18</sup> The Social Security Act and the Federal Employees' Compensation Act have different standards of medical proof on the question of disability.<sup>19</sup> Thus, this evidence is not relevant with regard to appellant's claim under the Federal Employees' Compensation Act.

Although appellant was advised by the Office's January 27, 2004 letter of the necessity of providing a rationalized report from her physician explaining how and why the accepted condition would cause the claimed recurrence of disability, appellant did not submit such evidence. The Board finds that the arguments and evidence submitted by appellant in support of her claim are insufficient to establish that she sustained a recurrence of total disability from December 2 to 13, 2003 as alleged.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability commencing December 2, 2003 as alleged.

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<sup>18</sup> *Daniel Deparini*, 44 ECAB 657, 660 (1993).

<sup>19</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 20, 2005 is affirmed.

Issued: December 5, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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