

On August 11, 2004 appellant filed a claim alleging a recurrence of disability on July 29, 2004. She indicated that she stopped work on July 30, 2004 and returned to work the next day. Appellant stated that hers was an ongoing injury and that her condition, “neck and shoulder,” was the same as before.

On August 31, 2004 the Office requested that appellant submit additional evidence to support her claim of recurrence. The Office asked her to submit a statement of the reason she believed her current disability or medical treatment was related to the original work injury. The Office also asked her to submit medical evidence supporting the claimed disability for work:

“Please obtain and submit treatment notes from your physician supporting your examination on July 29, 2004 and objective physical findings that supported your work stoppage on July 29, 2004. Please note that your physician cannot back date disability dates. He must have actually examined you on July 29, 2004 to render you disabled effective that date.”

In a decision dated October 13, 2004, the Office denied appellant’s claim of recurrence on the grounds that she submitted no medical evidence to support that she was examined on July 29, 2004 and taken off work as a result of objective residuals of her accepted condition.

On October 26, 2004 appellant requested reconsideration, arguing that the Office should approve her claim of recurrence based on a September 20, 2004 report from Dr. Raul Florez, her orthopedist. On September 20, 2004 Dr. Florez addressed appellant’s right knee pathology and need for surgery. The record shows that Dr. Florez saw appellant on October 11, 2004 for her shoulder and neck. He noted that she was still having problems with pain in the right side of the shoulder, limited neck motions and pain radiating down to the top of the shoulder and into the right arm and hand. Dr. Florez stated that her diagnosis remained the same: status post neck injury with evidence of degenerative disc disease and shoulder tendinitis. The record also shows a disability certificate from Dr. Florez dated August 16, 2004: “Off work July 30th due to neck and shoulder problems.”

In a decision dated November 3, 2004, the Office reviewed the merits of appellant’s case and denied modification of its prior decision.

LEGAL PRECEDENT

Section 8102(a) of the Federal Employees’ Compensation Act provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹

A “recurrence of disability” means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous

¹ 5 U.S.C. § 8102(a).

injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 the employment injury and who supports that conclusion with sound medical reasoning.³

ANALYSIS

Appellant submitted no such evidence. The only medical evidence directly relevant to her claim of recurrence is a disability slip dated August 16, 2004, which confirmed that her doctor took her off work on July 30, 2004 for “neck and shoulder problems.” While this slip might be consistent with her claim of recurrence, it is not sufficient to establish that her disability for work that day was causally related to her 1986 employment injury. Generally, findings on examination are needed to justify a physician’s opinion that an employee is disabled for work.⁴ Dr. Florez did not report his findings on July 30, 2004 and did not explain how appellant’s “problems” were related to the 1986 employment injury. While his October 11, 2004 report related complaints, findings and a diagnosis, the report did not address whether appellant was disabled for work on July 30, 2004 as a result of her 1986 employment injury.

By not furnishing a narrative medical opinion from a physician who, on the basis of a complete and accurate factual and medical history, concludes that her disability for work on July 30, 2004 was causally related to her January 16, 1986 employment injury and who supports that conclusion with sound medical reasoning, appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on July 30, 2004 causally related to her January 16, 1986 employment injury.

² 20 C.F.R. § 10.5(x) (1999).

³ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

⁴ *Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985); see *John L. Clark*, 32 ECAB 1618 (1981) (when a physician’s statements regarding an employee’s ability to work consist only of a repetition of the employee’s complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation).

ORDER

IT IS HEREBY ORDERED THAT the November 3 and October 13, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member